

WATERS

CHAPTER 488

HOUSE BILL NO. 1353

(Representatives Schmidt, Delzer, Monson, J. Nelson, Pollert)
(Senators Kreun, Schaible, Sorvaag, Bell, Wardner)

AN ACT to create and enact sections 61-03-01.1, 61-03-01.2, and 61-03-01.3 of the North Dakota Century Code, relating to the establishment of the department of water resources and powers and duties of the director of the department of water resources; to amend and reenact subsection 1 of section 4.1-01-18, sections 4.1-35-01 and 4.1-35-04, subsection 3 of section 4.1-35-05, section 11-33.2-12.1, subsection 1 of section 23.1-01-02, sections 23.1-08-13, 23.1-11-06, 23.1-11-10, 23.1-11-11, 24-03-06, 24-03-08, and 24-06-26.1, subsection 2 of section 37-17.1-11, subsection 12 of section 38-14.1-03, subdivision n of subsection 1 of section 38-14.1-14, subsection 2 of section 38-14.1-21, subsection 7 of section 38-14.1-24, subsection 1 of section 38-14.1-25, subsection 1 of section 38-23-08, subsection 11 of section 40-50.1-01, section 43-35-03, subsection 1 of section 54-57-03, sections 57-02-08.6 and 57-28-09, subsection 4 of section 61-01-01, sections 61-01-03, 61-01-05, 61-01-06, 61-01-25, 61-02-05, 61-02-14.2, 61-02-23.3, 61-02-26, 61-02-27, 61-02-30, 61-02-32, 61-02-33, 61-02-41, 61-02-68.10, 61-02.1-01, 61-03-03, 61-03-04, 61-03-06, 61-03-08, 61-03-10, 61-03-12, 61-03-13, 61-03-14, 61-03-15, 61-03-16, 61-03-17, 61-03-18, 61-03-19, 61-03-20, 61-03-21, 61-03-21.1, 61-03-21.2, 61-03-21.3, 61-03-21.4, 61-03-22, 61-03-23, 61-03-24, 61-03-25, and 61-04-01, subsections 1 and 15 of section 61-04-01.1, sections 61-04-02, 61-04-02.1, 61-04-02.2, 61-04-03, 61-04-03.1, 61-04-04, 61-04-04.1, 61-04-04.2, 61-04-04.3, 61-04-05, 61-04-05.1, 61-04-06, 61-04-06.1, 61-04-06.2, 61-04-06.3, 61-04-07.2, 61-04-07.3, 61-04-09, 61-04-11, 61-04-12, 61-04-14, 61-04-15, 61-04-15.2, 61-04-15.3, 61-04-15.4, and 61-04-23, subsection 1 of section 61-04-24, sections 61-04-25, 61-04-26, 61-04-27, 61-04-28, 61-04-29, 61-04-30, 61-04-31, and 61-04.1-04, subsection 3 of section 61-05-01, sections 61-05-07, 61-05-08, 61-05-09, 61-05-10, 61-05-11, 61-05-12, 61-05-13, 61-05-14, 61-05-15, 61-05-16, 61-05-17, 61-05-18, 61-05-19, 61-05-20, 61-06-01, 61-06-03, 61-06-04, 61-06-05, 61-06-19, 61-07-08, 61-07-19, 61-07-27, 61-09-02, 61-10-27, 61-10-30, 61-10-35, 61-10-37, 61-11-04, 61-11-08, 61-11-09, 61-11-15, 61-12-46, 61-14-01, 61-14-03, 61-14-06, 61-14-07, 61-14-13, 61-15-03, 61-15-09, and 61-16-06.1, subsection 1 of section 61-16.1-09.1, sections 61-16.1-23, 61-16.1-37, 61-16.1-38, 61-16.1-39, 61-16.1-53.1, 61-16.2-01, 61-16.2-02, 61-16.2-03, 61-16.2-04, and 61-16.2-05, subsection 1 of section 61-16.2-09, sections 61-16.2-11, 61-16.2-13, 61-16.2-14, 61-20-02, 61-20-03, 61-20-06, 61-20-07, 61-21-02.1, 61-21-22, 61-21-34, 61-24-07, 61-24.3-01, 61-24.5-01, 61-24.5-18, 61-24.6-01, 61-24.6-02, 61-24.6-03, 61-24.6-05, 61-24.8-01, 61-24.8-18, and 61-29-04, subsection 6 of section 61-31-02, and sections 61-32-03, 61-32-03.1, 61-32-08, 61-33-01, 61-33-01.1, 61-33-02, 61-33-03, 61-33-05, 61-33-05.1, 61-33-07, 61-33-08, 61-33-09, 61-33-10, 61-33.1-07, 61-34-01, 61-34-04, 61-35-01, 61-35-02, 61-35-02.1, 61-35-04, 61-35-05, 61-35-07, 61-35-08, 61-35-16, 61-35-18, 61-35-20, 61-35-21, 61-35-22, 61-35-23, 61-35-25, 61-35-63, 61-38-01, 61-38-02, 61-38-03, 61-38-04, 61-38-05,

61-38-06, 61-38-07, 61-38-08, 61-38-09, 61-38-10, 61-38-11, 61-39-01, and 61-40-07 of the North Dakota Century Code, relating to the powers and duties of the department of water resources and the state engineer and updates to statutory language; and to repeal sections 61-03-01, 61-03-02, and 61-03-05.1 of the North Dakota Century Code, relating to the powers and duties of the state engineer and the water use fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4.1-01-18 of the North Dakota Century Code is amended and reenacted as follows:

1. The federal environmental law impact review committee consists of:
 - a. The commissioner, who shall serve as the chairman;
 - b. The governor or the governor's designee;
 - c. The majority leader of the house of representatives, or the leader's designee;
 - d. The majority leader of the senate, or the leader's designee;
 - e. One member of the legislative assembly from the minority party, selected by the chairman of the legislative management;
 - f. One individual appointed by the North Dakota corn growers association;
 - g. One individual appointed by the North Dakota grain growers association;
 - h. One individual appointed by the North Dakota soybean growers association;
 - i. One individual appointed by the North Dakota stockmen's association;
 - j. One individual appointed by the North Dakota farm bureau;
 - k. One individual appointed by the North Dakota farmers union;
 - l. The chairman of the public service commission or the chairman's designee;
 - m. The state engineer~~director of the department of water resources~~ or the state engineer's~~director's~~ designee;
 - n. The director of the game and fish department, or the director's designee;
 - o. The director of the department of transportation, or the director's designee;
 - p. The director of the department of environmental quality, or the director's designee;
 - q. One representative of an investor-owned utility company;
 - r. One representative from the North Dakota association of rural electric cooperatives; and

- s. Two individuals from the energy community appointed by the commissioner.

SECTION 2. AMENDMENT. Section 4.1-35-01 of the North Dakota Century Code is amended and reenacted as follows:

4.1-35-01. Definitions.

As used in this chapter:

1. "Chemigation" means any process by which chemicals, including pesticides and fertilizers, are applied to land or crops through an irrigation system.
2. "Commissioner" means the agriculture commissioner and includes any employee or agent designated by the commissioner.
3. "Fertilizer" means any fertilizer as defined by section 4.1-40-01.
4. "Pesticide" means that term defined in section 4.1-33-01.
5. ~~"State engineer" means the state engineer appointed by the state water commission under section 61-03-01.~~

SECTION 3. AMENDMENT. Section 4.1-35-04 of the North Dakota Century Code is amended and reenacted as follows:

4.1-35-04. Inspections - Assistance of ~~state engineer~~department of water resources.

The ~~state engineer~~department of water resources shall cooperate with the commissioner in the inspection of any irrigation system using chemigation. The ~~state engineer~~department shall inform the commissioner of any violation of this chapter which is discovered in the course of the ~~state engineer's~~department's regular inspections of irrigation systems using chemigation.

SECTION 4. AMENDMENT. Subsection 3 of section 4.1-35-05 of the North Dakota Century Code is amended and reenacted as follows:

3. For the purpose of carrying out the provisions of this chapter, the commissioner and the ~~state engineer~~department of water resources may enter upon any public or private premises at reasonable times in order to:
 - a. Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which the equipment is stored or used.
 - b. Inspect or sample lands actually, or reported to be, exposed to pesticides or fertilizers through chemigation.
 - c. Inspect storage or disposal areas.
 - d. Inspect or investigate complaints of injury to humans or animals.
 - e. Sample pesticides and fertilizers and pesticide or fertilizer mixes being applied or to be applied.
 - f. Observe the use and application of a pesticide or fertilizer through chemigation.

- g. Have access for the purpose of inspecting a premise or other place where equipment or devices used for chemigation are held for distribution, sale, or use.

SECTION 5. AMENDMENT. Section 11-33.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

11-33.2-12.1. Contents of plat - Location and elevation of lakes, rivers, or streams - Notification of floodplain.

Whenever land, subject to regulation under this chapter, abutting upon any lake, river, or stream is subdivided, the subdivider must show on the plat or other document containing the subdivision a contour line denoting the present shoreline, water elevation, and the date of the survey. If any part of a plat or other document lies within the one hundred year floodplain of a lake, river, or stream as designated by the ~~state engineer~~ department of water resources or a federal agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable benchmark described on the plat with its location and elevation to the nearest hundredth of a foot [0.3048 centimeter], which must be given in mean sea level datum.

SECTION 6. AMENDMENT. Subsection 1 of section 23.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The environmental review advisory council is established to advise the department of environmental quality in carrying out its duties. The council consists of the ~~state engineer~~ director of the department of water resources, state geologist, and director of the game and fish department, who serve as ex officio members, and ten members appointed by the governor. The director of the department of environmental quality or the director's designee shall serve as the executive secretary for the council. The appointed members must be:
 - a. A representative of county or municipal government;
 - b. A representative of manufacturing or agricultural processing;
 - c. A representative of the solid fuels industry;
 - d. A representative of the liquid and gas fuels industry;
 - e. A representative of crop agriculture;
 - f. A representative of the waste management industry;
 - g. A representative with an agronomy or soil sciences degree;
 - h. A representative of the thermal electric generators industry;
 - i. A representative of the environmental sciences; and
 - j. A representative of the livestock industry.

SECTION 7. AMENDMENT. Section 23.1-08-13 of the North Dakota Century Code is amended and reenacted as follows:

23.1-08-13. Preconstruction site review.

The department, in cooperation with the ~~state engineer~~department of water resources and the state geologist, shall develop criteria for siting a solid waste disposal facility based upon potential impact on environmental resources. Any application for a landfill permit received after the department develops siting criteria as required by this section must be reviewed for site suitability by the department after consultation with the ~~state engineer~~department of water resources and state geologist before any site development. Site development does not include the assessment or monitoring associated with the review as required by the department in consultation with the ~~state engineer~~department of water resources and state geologist.

SECTION 8. AMENDMENT. Section 23.1-11-06 of the North Dakota Century Code is amended and reenacted as follows:

23.1-11-06. Ground water quality monitoring.

The department shall conduct ground water quality monitoring activities in cooperation with the ~~state engineer~~department of water resources and other state agencies. Based on monitoring results, the department of environmental quality shall implement or require appropriate mitigation activities or remedial action to prevent future contamination of ground water. The commissioner may implement or require appropriate mitigation activities pursuant to chapter 4.1-33 to prevent future contamination of ground water as it relates to the use of pesticides.

SECTION 9. AMENDMENT. Section 23.1-11-10 of the North Dakota Century Code is amended and reenacted as follows:

23.1-11-10. Wellhead protection program.

The department, in cooperation with the ~~state engineer~~department of water resources and state geologist, shall assist in implementing a public water supply wellhead protection program for protection of ground water resources utilizing existing state and local statutory authority.

SECTION 10. AMENDMENT. Section 23.1-11-11 of the North Dakota Century Code is amended and reenacted as follows:

23.1-11-11. Rules.

The department, with the approval of the commissioner and the ~~state engineer~~director of the department of water resources, shall adopt rules necessary for implementation of this chapter.

SECTION 11. AMENDMENT. Section 24-03-06 of the North Dakota Century Code is amended and reenacted as follows:

24-03-06. Method of construction of highway ditches.

All highways constructed or reconstructed by the department, board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or by any individual firm, corporation, or limited liability company must be so designed as to permit the waters running into the ditches to drain into coulees, rivers, and lakes according to the surface and terrain where the highway or highways are

constructed in accordance with the stream crossing standards prepared by the department and the ~~state engineer~~department of water resources so as to avoid the waters flowing into and accumulating in the ditches to overflow adjacent and adjoining lands. In the construction of highways the natural flow and drainage of surface waters to the extent required to meet the stream crossing standards prepared by the department and the ~~state engineer~~department of water resources may not be obstructed, but the water must be permitted to follow the natural course according to the surface and terrain of the particular terrain. The department, county, township, their contractors, subcontractors, or agents, or any individual firm, corporation, or limited liability company is not liable for any damage caused to any structure or property by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the ~~state engineer~~department of water resources.

SECTION 12. AMENDMENT. Section 24-03-08 of the North Dakota Century Code is amended and reenacted as follows:

24-03-08. Determinations of surface water flow and appropriate highway construction.

Whenever and wherever a highway under the supervision, control, and jurisdiction of the department or under the supervision, control, and jurisdiction of the board of county commissioners of any county or the board of township supervisors has been or will be constructed over a watercourse or draw into which flow surface waters from farmlands, the ~~state engineer~~department of water resources, upon petition of the majority of landowners of the area affected or at the request of the board of county commissioners, township supervisors, or a water resource board, shall determine as nearly as practicable the design discharge that the crossing is required to carry to meet the stream crossing standards prepared by the department and the ~~state engineer~~department of water resources. When the determination has been made by the ~~state engineer~~department of water resources, the department of transportation, the board of county commissioners, or the board of township supervisors, as the case may be, upon notification of the determination, shall install a culvert or bridge of sufficient capacity to permit the water to flow freely and unimpeded through the culvert or under the bridge. The department, county, and township are not liable for any damage to any structure or property caused by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the ~~state engineer~~department of water resources.

SECTION 13. AMENDMENT. Section 24-06-26.1 of the North Dakota Century Code is amended and reenacted as follows:

24-06-26.1. Township road and drainage construction standards.

~~Whenever~~When the construction or reconstruction of a township road or bridge, the insertion of a culvert in a township road, or the construction or reconstruction of a ditch or drain in connection with a township road affects the flow of surface waters and increases the surface waterflow through ditches, drains, bridges, and culverts in other townships, the board of township supervisors or the township overseer of highways of the township undertaking the construction or reconstruction shall give notice to the boards of township supervisors or township overseers of highways in all townships affected by the construction or reconstruction projects.

The boards of township supervisors of townships affected by any road or bridge construction that changes or increases the flow of surface waters shall cooperate in

the construction projects expending on any portion of the projects the portions of the road and bridge tax as deemed conducive to the interests of the township. The board of township supervisors shall construct the ditches, drains, bridges, and culverts in accordance with stream crossing standards prepared by the department and the ~~state engineer~~department of water resources. A township, board of township supervisors, and township overseer of highways are not liable for any damage caused to any structure or property by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the ~~state engineer~~department of water resources.

SECTION 14. AMENDMENT. Subsection 2 of section 37-17.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. The ~~North Dakota state engineer and the~~ water commission and department of water resources, in conjunction with the division of homeland security, shall keep land uses and construction of structures and other facilities under continuing study and identify areas ~~which that~~ are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies under this subsection must concentrate on means of reducing or avoiding the dangers caused by this ~~occurrence~~severe land shifting, subsidence, flood, or other catastrophic occurrence, or the consequences ~~thereof~~ of severe land shifting, subsidence, flood, or other catastrophic occurrence.

SECTION 15. AMENDMENT. Subsection 12 of section 38-14.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12. To adopt rules consistent with state law, in consultation with the state geologist, department of environmental quality, and the ~~state engineer~~department of water resources for the protection of the quality and quantity of waters affected by surface coal mining operations.

SECTION 16. AMENDMENT. Subdivision n of subsection 1 of section 38-14.1-14 of the North Dakota Century Code is amended and reenacted as follows:

- n. The name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged, including the drainage permit application to the ~~state engineer~~department of water resources, if required, ~~pursuant to other applicable state law~~.

SECTION 17. AMENDMENT. Subsection 2 of section 38-14.1-21 of the North Dakota Century Code is amended and reenacted as follows:

2. The commission's approval or modification of the permit or permit revision application must include consideration of the advice and technical assistance of the state historical society, the department of environmental quality, the soil conservation committee, the game and fish department, the state forester, the state geologist, and the ~~state engineer~~department of water resources, and may also include those state agencies versed in soils, agronomy, ecology, geology, and hydrology, and other agencies and individuals experienced in reclaiming surface mined lands.

SECTION 18. AMENDMENT. Subsection 7 of section 38-14.1-24 of the North Dakota Century Code is amended and reenacted as follows:

7. Create, if authorized in the approved mining and reclamation plan and permit, as part of reclamation activities, permanent water impoundments in accordance with the requirements of the ~~state engineer pursuant to other applicable state law~~ department of water resources and all of the following standards:
 - a. The size of the impoundment will be adequate for its intended purposes.
 - b. The impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with the requirements of applicable state law.
 - c. The quality of impounded water will be suitable on a permanent basis for its intended use, and discharges from the impoundment will not exceed the quality limitations imposed by the North Dakota pollutant discharge elimination system or degrade the water quality below water quality standards established pursuant to this chapter, whichever is more stringent.
 - d. The level of water will be reasonably stable.
 - e. Final grading will provide adequate safety and access for maintenance and proposed water users.
 - f. ~~Such~~ The water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

SECTION 19. AMENDMENT. Subsection 1 of section 38-14.1-25 of the North Dakota Century Code is amended and reenacted as follows:

1. A permittee may not use any coal or commercial leonardite mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid or solid wastes either temporarily or permanently as dams or embankments unless approved by the commission; after consultation with the ~~state engineer~~ department of water resources.

SECTION 20. AMENDMENT. Subsection 1 of section 38-23-08 of the North Dakota Century Code is amended and reenacted as follows:

1. The high-level radioactive waste advisory council is established to advise the commission in carrying out its duties. The council consists of the ~~state engineer~~ director of the department of water resources, state health officer, director of the department of transportation, director of the game and fish department, the commerce commissioner, and director of the department of environmental quality, who serve as ex officio members. The state geologist shall serve as the executive secretary for the council. Additional members on the council are:
 - a. A representative of county government, appointed by the governor;
 - b. A representative of city government, appointed by the governor;
 - c. A representative of the agricultural community, appointed by the governor;

- d. Two senators, appointed by the majority leader of the senate of the legislative assembly; and
- e. Two representatives, appointed by the majority leader of the house of representatives of the legislative assembly.

SECTION 21. AMENDMENT. Subsection 11 of section 40-50.1-01 of the North Dakota Century Code is amended and reenacted as follows:

11. Any plat which includes lands abutting upon any lake, river, or stream must show a contour line denoting the present shoreline, water elevation, and the date of survey. If any part of a plat lies within the one hundred year floodplain of a lake, river, or stream as designated by the ~~state engineer~~department of water resources or a federal agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable benchmark described on the plat with its location and elevation to the nearest hundredth of a foot [0.3048 centimeter], which must be given in mean sea level datum.

SECTION 22. AMENDMENT. Section 43-35-03 of the North Dakota Century Code is amended and reenacted as follows:

43-35-03. State board of water well contractors - Members' appointment - Qualification.

The state board of water well contractors consists of the ~~state engineer~~director of the department of water resources and the director of the department of environmental quality, or their duly authorized designees, two water well contractors appointed by the governor, one geothermal system driller or one monitoring well contractor appointed by the governor, one water well pump and pitless unit installer appointed by the governor, and one member appointed at large by the governor.

SECTION 23. AMENDMENT. Subsection 1 of section 54-57-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, the ~~state engineer~~department of water resources, the department of transportation, job service North Dakota, and the labor commissioner, must be conducted by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the ~~state engineer~~department of water resources pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with chapter 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.

SECTION 24. AMENDMENT. Section 57-02-08.6 of the North Dakota Century Code is amended and reenacted as follows:

57-02-08.6. Authorization for receipt of funds.

The state treasurer ~~is authorized to~~ may receive funds for the wetlands property tax exemption program by legislative appropriation and by gift, grant, devise, or bequest of any money or property from any private or public source. Funds appropriated from any source for this purpose are not subject to section 54-44.1-11, and all income and moneys derived from the investment of the funds must be credited to the fund for the wetlands property tax exemption program. The director of the game and fish department, the agriculture commissioner, and the ~~state engineer~~ director of the department of water resources shall work with the governor, the United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop a source of funding to implement sections 57-02-08.4 and 57-02-08.5.

SECTION 25. AMENDMENT. Section 57-28-09 of the North Dakota Century Code is amended and reenacted as follows:

57-28-09. Tax deed to be issued.

After the date of foreclosure for property with an unsatisfied tax lien, the county auditor shall issue a tax deed to the county or, in cases in which the ~~state engineer~~ department of water resources has made an assessment against the property under section 61-03-21.3, the county auditor shall issue a tax deed to the state or, if the property was sold by another political subdivision of this state within the ten years preceding the foreclosure, the county auditor shall issue a tax deed to that political subdivision. The tax deed passes the property in fee to the county, the state, or political subdivision, free from all encumbrances except installments of special assessments certified to the county auditor or which may become due after the service of the notice of foreclosure of tax lien, a homestead credit for special assessments lien provided for in section 57-02-08.3, and an easement or right of way recorded with an effective date that precedes the date of official notice to the record titleholder which states that property taxes are delinquent and constitute a property lien. While the county, the state, or political subdivision holds title under a tax deed, it is not liable for the payment of any installments of special assessments which become due unless the board of county commissioners, the state, or political subdivision has leased or contracted to sell the property. A deed issued under this section is prima facie evidence of the truth and regularity of all facts and proceedings before the execution of the deed.

SECTION 26. AMENDMENT. Subsection 4 of section 61-01-01 of the North Dakota Century Code is amended and reenacted as follows:

4. All waters, excluding privately owned waters, in areas determined by the ~~state engineer~~ department of water resources to be noncontributing drainage areas. A noncontributing drainage area is any area that does not contribute natural flowing surface water to a natural stream or watercourse at an average frequency more often than once in three years over the latest thirty-year period.

SECTION 27. AMENDMENT. Section 61-01-03 of the North Dakota Century Code is amended and reenacted as follows:

61-01-03. Claims to the use of water initiated prior to and after March 1, 1905.

In all cases of claims to the use of water initiated prior to March 1, 1905, the right shall ~~relate~~relates back to the initiation of the claim, upon the diligent prosecution to completion of the necessary surveys and construction for the application of the water to a beneficial use. ~~All claims~~Any claim to the use of water initiated after March 1, 1905, shall ~~relate~~relates back to the date of receipt of an application ~~therefor~~for the claim in the office of the ~~state engineer~~department of water resources or the department's predecessor, subject to compliance with the applicable provisions of ~~law~~statutes, and the rules, and regulations ~~established thereunder~~.

SECTION 28. AMENDMENT. Section 61-01-05 of the North Dakota Century Code is amended and reenacted as follows:

61-01-05. Reclaiming waters turned into natural or artificial watercourse.

Water turned into any natural or artificial watercourse by any party entitled to the use of ~~such~~the water may be reclaimed below and diverted ~~therefrom~~from the watercourse by ~~such~~the party, subject to existing rights, due allowance for losses being made, as determined by the ~~state engineer~~department of water resources.

SECTION 29. AMENDMENT. Section 61-01-06 of the North Dakota Century Code is amended and reenacted as follows:

61-01-06. Watercourse - Definition.

A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and a defined channel. ~~It is not essential that the~~The supply of water ~~should~~is not required to be continuous or from a perennial living source. ~~It is enough~~The criteria for constituting a watercourse are satisfied if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character. If requested by a water resource board, the ~~state engineer~~department of water resources shall determine ~~if~~whether a watercourse is constituted.

SECTION 30. AMENDMENT. Section 61-01-25 of the North Dakota Century Code is amended and reenacted as follows:

61-01-25. Penalty.

Any person violating any of the provisions of this chapter or any rule or regulation of the ~~state engineer~~department of water resources for which another penalty is not specifically provided is guilty of a class B misdemeanor.

SECTION 31. AMENDMENT. Section 61-02-05 of the North Dakota Century Code is amended and reenacted as follows:

61-02-05. Chairman of commission.

The governor ~~shall be~~is the chairman of the commission. The governor shall designate a vice chairman ~~who shall be a member~~from the members of the commission. The ~~state engineer~~shall bedirector of the department of water resources ~~is~~ the secretary of the commission.

SECTION 32. AMENDMENT. Section 61-02-14.2 of the North Dakota Century Code is amended and reenacted as follows:

61-02-14.2. Commission contracts may be executed by ~~state engineer~~director.

The ~~state engineer~~ director of the department of water resources, or the ~~state engineer's director's~~ authorized designee, may execute contracts approved by the commission.

SECTION 33. AMENDMENT. Section 61-02-23.3 of the North Dakota Century Code is amended and reenacted as follows:

61-02-23.3. Construction and operation of the Devils Lake outlet - Authorization - Agreement.

The state water commission may do all things reasonably necessary to construct an outlet from Devils Lake, including executing an agreement with the federal government ~~wherein~~ in which the state water commission agrees to hold the United States harmless and free from damages, except for damages due to the fault or negligence of the United States or its contractors. The ~~state engineer~~ director of the department of water resources may employ full-time personnel and ~~may employ such~~ other personnel as are necessary for the operation and maintenance of the Devils Lake outlet within the limits of legislative appropriations for that purpose. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund and appropriated for the purposes of this section may be used for salaries, equipment, operations, and maintenance costs relating to the Devils Lake outlet.

SECTION 34. AMENDMENT. Section 61-02-26 of the North Dakota Century Code is amended and reenacted as follows:

61-02-26. Duties of state agencies concerned with intrastate use or disposition of waters.

Every state officer, department, board, and commission ~~heretofore or hereafter~~ authorized by any law of this state to take any action, perform any duties, or make any contract ~~which concerns~~ concerning the use or disposition of waters, or water rights, within the state first shall submit to the ~~state engineer~~ department of water resources any plans, purposes, and contemplated action with respect to the use or disposition of ~~such~~ the waters, and except as provided in this chapter, ~~shall~~ must receive the consent and approval of the ~~state engineer~~ department of water resources before making any agreement, contract, purchase, sale, or lease to carry into execution any works or projects authorized under the provisions of this chapter.

SECTION 35. AMENDMENT. Section 61-02-27 of the North Dakota Century Code is amended and reenacted as follows:

61-02-27. Proposals with respect to use or disposition of waters to be presented to ~~state engineer~~ department of water resources.

All persons, ~~including corporations, limited liability companies, voluntary organizations, and associations,~~ when concerned with any agreement, contract, sale, or purchase, or the construction of any works or project which involves the use and disposition of any water or water rights, shall present to the ~~state engineer~~ department of water resources all proposals with respect to the use or disposition of any ~~such~~ waters before making any agreement, contract, purchase, sale, or lease ~~in respect thereof~~ regarding the waters.

SECTION 36. AMENDMENT. Section 61-02-30 of the North Dakota Century Code is amended and reenacted as follows:

61-02-30. Commission acquiring water rights and administering provisions of chapter - Declaration of intention.

In acquiring the rights and administering the terms of this chapter, the commission may initiate a right to waters of this state by executing a declaration in writing of the intention to store, divert, or control the unappropriated waters of a particular body, stream, basin, or source, designating and describing in general terms the waters claimed, means of appropriation, and location of proposed use, and shall cause said ~~notice~~the declaration to be filed in the ~~office of the state engineer~~department of water resources. The ~~state engineer~~department shall issue a conditional water permit to the commission consistent with the terms of the declaration of intention, which ~~shall vest~~vests in ~~such~~the commission on the date of the filing of ~~such~~the declaration. The commission also shall file in the ~~office of the state engineer~~department copies of ~~its~~the commission's plans and specifications involved in completing any project for the appropriation of water which ~~it~~the commission intends to construct. Except as provided by this section, water rights ~~shall~~must be acquired by any person, association, firm, corporation, limited liability company, municipality, or state or federal agency, department, or political subdivision in the manner provided by chapter 61-04.

SECTION 37. AMENDMENT. Section 61-02-32 of the North Dakota Century Code is amended and reenacted as follows:

61-02-32. Modification of plans by commission regarding project to appropriate waters - Filing declaration of intention.

~~If~~the commission, ~~if it shall modify~~modifies its plans in connection with any proposed project ~~concerning~~for which the commission ~~shall have~~has filed a declaration of intention to appropriate waters, ~~the commission shall file in the office of the state engineer~~department of water resources a declaration releasing all or part of the waters affected by ~~such~~the declaration.

SECTION 38. AMENDMENT. Section 61-02-33 of the North Dakota Century Code is amended and reenacted as follows:

61-02-33. Commission to file declaration of completion of appropriation with ~~state engineer~~department of water resources.

Upon completing the construction of works and application to beneficial use of the waters described in the declaration provided in section 61-02-30, the commission shall file in the ~~office of the state engineer~~department of water resources a declaration of completion of the appropriation, reciting the matters contained in the original declaration of intention to appropriate and the conditional water permit for ~~such~~the works obtained from the ~~state engineer~~department.

SECTION 39. AMENDMENT. Section 61-02-41 of the North Dakota Century Code is amended and reenacted as follows:

61-02-41. Surveys for the diversion of waters.

For the purpose of regulating the diversion of the natural flow of waters, ~~employees of the state engineer~~department of water resources may enter upon the means and place of use of all appropriators for the purpose of making surveys of respective rights and seasonal needs.

SECTION 40. AMENDMENT. Section 61-02-68.10 of the North Dakota Century Code is amended and reenacted as follows:

61-02-68.10. Execution and attestation of interim financing notes - Sale.

The interim financing notes ~~shall~~must be executed by the chairman or the vice chairman of the commission and ~~shall be attested by the signature of the state engineerdirector of the department of water resources.~~ The signature of the chairman or vice chairman, and the ~~state engineerdirector,~~ and any other signatures on appurtenant coupons, may be facsimiles. The notes ~~shall~~must be sold at private or public sale in ~~suchthe~~ manner, ~~and at suchthe~~ rate of interest, and ~~at such~~ price as the commission ~~shalldetermines~~ by resolution determine.

SECTION 41. AMENDMENT. Section 61-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

61-02.1-01. Legislative findings and intent - Authority to issue bonds.

1. The legislative assembly finds that some cities suffered serious economic and social injuries due to the major flood disaster in 1997 and other recent floods and are at significant risk for future flooding; that construction of flood control or reduction projects is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state; and that construction of any such projects involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. ~~Therefore, it is declared~~It is necessary and in the public interest that the state by and through the state water commission assist in financing the costs of constructing flood control or reduction projects through the issuance of bonds.
2. The legislative assembly finds ~~that~~ continued construction of the southwest pipeline project is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state ~~and that continued construction of the southwest pipeline project,~~ involves and requires the exercise of the sovereign powers of the state, and concerns a public purpose. The legislative assembly also finds ~~that~~ current funding for the southwest pipeline project has become uncertain, and ~~therefore, it is declared~~ necessary and in the public interest that the state by and through the state water commission assist in financing the costs of continued construction of the southwest pipeline project through the issuance of bonds.
3. The legislative assembly finds ~~that~~ the Devils Lake basin is suffering and facing a worsening flood disaster; ~~that~~ construction of an outlet from Devils Lake is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state; and ~~that~~ construction of the outlet involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. ~~Therefore, it is declared~~It is necessary and in the public interest that an outlet from Devils Lake be constructed with financing from the state water commission to provide flood relief to the Devils Lake basin.
4. The legislative assembly finds ~~that~~ there is a critical need to develop a comprehensive statewide water development program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to, its proper share of Missouri River water.
5. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02, and the proceeds are appropriated for flood control projects authorized and funded in part by the

federal government and designed to provide permanent flood control or reduction to cities that suffered severe damages as a result of the 1997 flood or other recent floods and to repay the line of credit extended to the state water commission under S.L. 1999, ch. 535, § 4. The commission may issue bonds for a flood control or reduction project only:

a. When:

- (1) A flood control or reduction project involves a city that suffered catastrophic flood damage requiring evacuation of the major share of its populace;
 - (2) A flood control or reduction project includes interstate features and requires acquisition of private property to build permanent flood protection systems to comply with federal flood protection standards;
 - (3) The governing body of a city provides a written certification to the state water commission that the city has committed itself to contribute one-half or more of the North Dakota project sponsor's share of the nonfederal share of the cost to construct the project;
 - (4) The United States army corps of engineers issues its approval of the flood control or reduction project;
 - (5) A project cooperation agreement, which contains provisions acceptable to the ~~state engineer~~department of water resources and is approved by the governor, is entered by the state of Minnesota or one of its political subdivisions in which the flood control or reduction project is to be constructed;
 - (6) A project cooperation agreement, which contains provisions acceptable to the ~~state engineer~~department of water resources and is approved by the governor, is entered by the state or one of its political subdivisions in which the flood control or reduction project is to be constructed;
 - (7) The governing body of the city has approved a financing plan for all amounts of the nonfederal share of a flood control or reduction project in excess of the amounts to be paid by the state; and
 - (8) ~~That the~~The flood control or reduction project is designed to be cost-effective, and that any impact on residential neighborhoods is minimized in an amount reasonably practicable as determined by the ~~state engineer~~department of water resources and approved by the governor;
- b. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least eight thousand and not more than ten thousand has received significant federal funding through federal grants and funds from the United States army corps of engineers and the federal emergency management agency; or
- c. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least four thousand five hundred and not more than six thousand has at least seventy percent of the land

within the boundaries of the city located within the one hundred year floodplain as designated on a flood insurance rate map and the United States army corps of engineers issues its approval of the flood control or reduction project.

6. In furtherance of the public purpose set forth in subsection 2, the state water commission may issue bonds under chapter 61-02, and the proceeds are appropriated for construction of the southwest pipeline project and to repay the line of credit extended to the state water commission under S.L. 1999, ch. 535, § 4. The commission may ~~only~~ issue bonds under this chapter for continued construction of the southwest pipeline project only when it is determined that the Perkins County water system will not make payment to the state water commission in the amount of four million five hundred thousand dollars or on January 1, 2000, whichever occurs earlier. If the Perkins County water system makes payment to the state water commission after January 1, 2000, the payment must be used to pay principal and interest on bonds issued for continued construction of the southwest pipeline project as provided in subsection 2 of section 61-02.1-04. If the Perkins County water system does not make payment to the state water commission, no benefits may accrue to the Perkins County water system.
7. In furtherance of the public purposes set forth in subsections 3 and 4, the state water commission may issue bonds under chapter 61-02 to finance the cost of one or more of the projects identified in this section.
8. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.
9. Notwithstanding this section, the state water commission may not issue bonds authorized under subsection 5 for a project unless federal funds have been appropriated for that project.

SECTION 42. Section 61-03-01.1 of the North Dakota Century Code is created and enacted as follows:

61-03-01.1. Department of water resources established - Appointment and salary of director.

The department of water resources is established and is the primary state water agency. The governor shall appoint a director of the department subject to approval by a majority of the members of the state water commission. The director may not engage in any other occupation or business that may conflict with the statutory duties of the director. The position of director of the department is not a classified position, and the state water commission shall set the salary of the director within the limits of legislative appropriations.

SECTION 43. Section 61-03-01.2 of the North Dakota Century Code is created and enacted as follows:

61-03-01.2. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Department" means the department of water resources.
2. "Director" means the director of the department.

SECTION 44. Section 61-03-01.3 of the North Dakota Century Code is created and enacted as follows:

61-03-01.3. Director - State engineer- Powers and duties.

1. The director shall:

- a. Enforce all rules adopted by the department;**
- b. Hire a state engineer who is a qualified professional engineer, has appropriate hydrology experience, and will report to the director;**
- c. Hire other employees as necessary to carry out the duties of the department and director;**
- d. Organize the department in an efficient manner; and**
- e. Take any other action necessary and appropriate for administration of the department.**

2. The state engineer is responsible for and shall manage the department's oversight of dam safety, water appropriations, and construction and drainage permits, and associated technical duties related to public safety and property protection.

SECTION 45. AMENDMENT. Section 61-03-03 of the North Dakota Century Code is amended and reenacted as follows:

61-03-03. AuditingApproval of claims.

All claims for services rendered, expenses incurred, or materials or supplies furnished under the direction of the state engineer~~director~~ and which are payable from the funds appropriated for the ~~prosecution of the work under the state engineer's~~~~director's~~ direction and supervision ~~shall~~must be approved by the ~~state engineer~~~~director~~ before payment.

SECTION 46. AMENDMENT. Section 61-03-04 of the North Dakota Century Code is amended and reenacted as follows:

61-03-04. Biennial report.

The ~~state engineer~~~~director~~ may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

SECTION 47. AMENDMENT. Section 61-03-06 of the North Dakota Century Code is amended and reenacted as follows:

61-03-06. Records of state engineer -- Open to public -- Contents -- Certified copies as evidence~~the department.~~

The records of the office of the ~~state engineer~~~~department~~ are public records, ~~shall remain on file in the state engineer's office, and shall be open to the inspection of the public at all times during business hours. Such~~The records shallmust show in full all permits, certificates of completion of construction, and licenses issued, ~~together with all action thereon~~actions taken on permits and licenses, and all actionactions or decisions of the ~~state engineer~~~~department~~ affecting any rights or claims to appropriate water. ~~Certified copies of any records or papers on file in the office of the~~

~~state engineer shall be evidence equally with the originals thereof, and when introduced as evidence shall be held as of the same validity as the originals.~~

SECTION 48. AMENDMENT. Section 61-03-08 of the North Dakota Century Code is amended and reenacted as follows:

61-03-08. Duty of state engineer to cooperate with boards of county commissioners when requested.

~~Whenever requested so to do~~When asked by the board of county commissioners of any county of this state, the ~~state engineer~~department shall cooperate with ~~such~~the board in the engineering work required to lay out, establish, and construct any drain to be used by any county or counties or portions of the same for the purpose of ~~diverting a county to divert~~ floodwaters, lakes, or watercourses, and in general shall aid and assist the counties of this state in making preliminary surveys and establishing systems of drainage.

SECTION 49. AMENDMENT. Section 61-03-10 of the North Dakota Century Code is amended and reenacted as follows:

61-03-10. Custodian of government plats.

~~The state engineer shall be~~department is the custodian of all plats, field notes, and ~~similar~~ records that have been or hereafter may be turned over provided to the state by ~~the~~a federal government entity. Suitable rooms shall be provided in the capitol building containing vaults for fireproof protection and the safekeeping of ~~such~~the records, and free access to any such field notes, maps, records, and other papers for the purpose of taking extracts therefrom or making copies thereof without charge of any kind, shall be allowed to all officers or employees of the United States during office hours must be provided to the department.

SECTION 50. AMENDMENT. Section 61-03-12 of the North Dakota Century Code is amended and reenacted as follows:

61-03-12. Attorney general and state's attorney advisers of state engineer to provide legal counsel.

The attorney general, and the state's attorney of the county in which legal questions arise, shall ~~be the legal advisers of the state engineer, and shall perform any and all legal duties necessary in connection with the state engineer's work;~~provide legal counsel for the department without compensation other than their salaries as fixed by law, except when otherwise provided.

SECTION 51. AMENDMENT. Section 61-03-13 of the North Dakota Century Code is amended and reenacted as follows:

61-03-13. Rules and regulations made by state engineer - ModificationRulemaking authority.

~~The state engineer shall make all general~~department may adopt rules necessary to carry into effect ~~out~~ the duties devolving upon the state engineer's office, and may change the same from time to time ~~of the department~~. All ~~such~~The department shall amend rules relating to applications for permits to appropriate water, for the inspection of works, for the issuance of licenses, and for the determination of rights to the use of water shall ~~be modified by the state engineer, if required to do so~~ by a vote of the state water commission.

SECTION 52. AMENDMENT. Section 61-03-14 of the North Dakota Century Code is amended and reenacted as follows:

61-03-14. ~~Modification of rules and regulations of engineer voted upon only upon appeal from engineer.~~ State water commission votes on modifications of

~~The modification of the rules and regulations of the state engineer provided for in section 61-03-13 shall be voted upon by the~~ The state water commission may vote on a modification of a department rule which is required under section 61-03-13 only on an appeal from a decision of the state engineer ~~director~~.

SECTION 53. AMENDMENT. Section 61-03-15 of the North Dakota Century Code is amended and reenacted as follows:

61-03-15. Hydrographic surveys and investigations made by state—~~engineer~~the department - Cooperating with federal agencies.

~~The state—engineer~~ department shall make hydrographic surveys and investigations of each stream system and source of water supply in the state, beginning with those most used for irrigation, and shall obtain and record all available data for the determination, development, and ~~adjudication~~ appropriation of the water supply of the state. ~~The state engineer~~ department may cooperate with the agencies of the federal government engaged in similar surveys and, investigations and in, or the construction of works for the development and use of the water supply of the state, expending for such purposes any money available for the work of the state engineer's office. ~~The state engineer may accept and use, in connection with the operation of the state engineer's department, the results of the work of the agencies of the government and may expend funds appropriated to the department for that purpose.~~

SECTION 54. AMENDMENT. Section 61-03-16 of the North Dakota Century Code is amended and reenacted as follows:

61-03-16. Suit for adjudication of water rights.

Upon the completion of a hydrographic survey of any stream system, the ~~state engineer~~ department shall deliver a copy thereof, ~~together with copies of the survey and~~ all data necessary for the determination of all rights to the use of the waters of ~~such~~ the system; to the attorney general of the state, who, within sixty days thereafter, shall enter suit on behalf of the state for the determination of all rights to the use of ~~such~~ the water; and ~~shall prosecute the same to proceed with the litigation until a final adjudication of the rights.~~ If private parties initiated the suit for the adjudication of such rights ~~shall have been begun by private parties, the attorney general shall not be required to bring suit, except that the attorney general shall intervene in any~~ the suit for the adjudication of rights to the use of water, on behalf of the state, if notified by the state engineer that, in the state engineer's opinion, the public interest requires ~~such action~~ if the department notifies the attorney general intervening is necessary to protect the interests of the state.

SECTION 55. AMENDMENT. Section 61-03-17 of the North Dakota Century Code is amended and reenacted as follows:

61-03-17. Parties to and costs of suit for adjudication of water rights.

In any suit for the determination of a right to the use of the waters of any stream system, all ~~who~~ persons that claim the right to use ~~such~~ the waters ~~shall~~ must be made parties. When any suit has been filed, the court, by its order duly entered, shall direct

~~the state engineer to make or furnish, and the department shall provide the court a complete hydrographic survey of suchthe stream system as is provided in this chapter, in order to obtain all data necessary to the determination of the rights involved. The cost of suchthe suit, including the litigation and survey costs on behalf ofincurred by the state, and of such surveys, shall must be charged againstto each of the private parties theretoto the suit in proportion to the amount of the water right allotted.~~

SECTION 56. AMENDMENT. Section 61-03-18 of the North Dakota Century Code is amended and reenacted as follows:

61-03-18. Hydrographic survey fund - Use - Payments.

The hydrographic survey fund, a permanent fund, ~~shallmay~~ be used only for the payment of the expenses of the surveys ~~ordered by the court as provided inrequired under~~ section 61-03-17. All claims for services rendered, expenses incurred, or materials or supplies furnished under the direction of the state engineer ~~in the prosecution of suchdepartment for the surveys shallmust~~ be approved by the state engineer~~department~~. The amounts paid by ~~theprivate~~ parties to such suits, ~~on account of suchunder section 61-03-17 for the surveys, shall must~~ be paid to the state treasurer, who shall credit the same ~~to suchpayments to the hydrographic survey fund, which shall continue to be available for advancing the expenses of such surveys, as ordered by the court from time to time.~~

SECTION 57. AMENDMENT. Section 61-03-19 of the North Dakota Century Code is amended and reenacted as follows:

61-03-19. Decree adjudicating water rights - Filing - Contents.

Upon the adjudication of the rights to the use of the waters of a stream system, a certified copy of the decree ~~shallmust~~ be prepared by the clerk of the court; at the cost of the parties, and ~~shallmust~~ be filed in the office ~~of the state engineerdepartment~~. Such decree, in every case, ~~shallThe decree must declare as to the water right adjudged to each party, the priority, amount, purpose, and place of use, and, as to water used for irrigation, the specific tracts of land to which it shall be the right is~~ appurtenant, together with ~~suchany~~ other conditions ~~as may be necessary to define the right and its the priority of the right.~~

SECTION 58. AMENDMENT. Section 61-03-20 of the North Dakota Century Code is amended and reenacted as follows:

61-03-20. State engineer to cooperateCooperation with United States geological survey in making topographic maps.

The ~~state engineerdepartment~~ may confer with the director of the United States geological survey and may accept the cooperation of the United States ~~with this state in the execution ofto execute~~ topographic surveys and maps of this state. The ~~state engineerdepartment~~ may arrange with the director or other authorized representative of the United States geological survey concerning the details of ~~such workthe surveys or maps, the method of its execution, and the order in which thesethe surveys and maps of different parts of the state shall beare~~ undertaken. In ~~any such work, the director of the United States geological survey shall agree to expend on the part of the United States upon said work a sum equal to that appropriated by the state from time to time for this purpose. In arranging these details the state engineer, in addition to such other provisions as the state engineer may deem wise, shall require that the maps resulting from this survey show the outlines of all counties, towns, and extensive wooded areas, as existing on the ground at the time of the execution of the~~

survey, the location of all railways, roads, streams, canals, lakes, and rivers, and contain contour lines showing the elevation and depression for at least every twenty feet [6.10 meters] in vertical interval of the surface of the country. The resulting map must recognize wholly the cooperation of the state of North Dakota and, as each manuscript sheet of the map is completed, the United States geological survey should furnish the state engineer with photographic copies of the same. As the engraving on each sheet is completed, the director shall furnish the state engineer with transfers from the copperplates of the same.

SECTION 59. AMENDMENT. Section 61-03-21 of the North Dakota Century Code is amended and reenacted as follows:

61-03-21. State engineer may require planPlans of operation for reservoirs - Adequate structure.

Every operator of a water storage reservoir in North Dakota having a capacity of more than one thousand acre-feet [1233481.84 cubic meters] annually shall annually file with the department, between the first and fifteenth day of February, file with the state engineer an operating plan for suchthe reservoir for the calendar year in which the sameplan is filed. The operator of any suchthe reservoir shall be required to cooperate with the state engineer to the end thatdepartment to make all water releases shall be compatible with the best interest of the greatest number of downstream water users and affected landowners. In the event that the state engineerIf the department declares an emergency to exist in connection with the operation of any suchthe reservoir, the operator thereof shall promptly submit to the state engineerdepartment a separate interim operating plan therefor in addition to the annual reservoir operating plan herein requiredfor the reservoir. SuchThe interim operating plan shall thenmust be coordinated and integrated with the suggestions and plans of the state engineerdepartment to best serve the affected interestspersons during suchthe emergency. The state engineerdepartment may also require suchreservoir operators to maintain adequate structures and to operate them in a manner that willto prevent waste, promote the beneficial use of water, and not endanger the general health and welfare of persons affected therebyby the reservoirs. In the event suchIf an operator fails to maintain and operate adequate structures in the manner provided in this section, the state engineerdepartment shall set a place and time for hearing and shall serve notice upon suchthe operator to show cause at such time and place why the operator's water permit should not be declared terminated and canceled. A copy of any order terminating or canceling suchthe water right shall must be filed in the office of the recorder in the county or counties where the land to which the right is appurtenant is located. An appeal may be taken from the decision of the state engineerdepartment in accordance with the provisions of chapter 28-32.

SECTION 60. AMENDMENT. Section 61-03-21.1 of the North Dakota Century Code is amended and reenacted as follows:

61-03-21.1. Inspection by state engineerdepartment.

Whenever the state engineerWhen the department is authorized or mandated by law to inspect or investigate an alleged violation of a statute under this title, the state engineer shall have the authority todepartment may enter upon land for the purposes of conducting such an to conduct the inspection or investigation. Except in emergency situations as determined by the state engineerdepartment, the state engineerdepartment shall request written permission from the landowner to enter the property. If the landowner refuses to give written permission, or fails to respond within five days of the request, the state engineerdepartment may request the district court

of the district containing the property for an order authorizing the ~~state engineer~~department to enter the property to inspect or investigate the alleged violation.

SECTION 61. AMENDMENT. Section 61-03-21.2 of the North Dakota Century Code is amended and reenacted as follows:

61-03-21.2. Removal or modification of unsafe or unauthorized works.

If the ~~state engineer~~ pursuant to the ~~state engineer's~~ authority under this ~~title~~department determines that works are unsafe or unauthorized, the ~~state engineer~~department shall notify the landowners by registered mail at the landowner's last-known post-office address of record. A copy of the notice ~~must~~ also ~~must~~ be sent to any tenant, if the ~~state engineer~~department has actual knowledge of the fact that a tenant exists. The notice must specify the nature and extent of the noncompliance, and the modifications necessary for compliance, and must state that if the works are not modified or removed within the period stated in the notice, but not less than thirty days, the ~~state engineer~~department shall cause the removal or modification of the works and assess the cost thereof of the removal or modification, or ~~such a~~ portion of the cost as the ~~state engineer~~ shall ~~determine~~department determines, against the property of the landowner responsible. The notice also must ~~also~~ state that the affected landowner may, demand in writing a hearing on the matter within fifteen days of the date the notice is mailed, ~~demand, in writing, a hearing upon the matter~~. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the ~~state engineer~~department determines the issues, facts, and law to be presented are well-founded and ~~are~~ not frivolous, and the request for a hearing was not made merely to interpose delay, the ~~state engineer~~department shall set a hearing date without undue delay. In the event of an emergency, the ~~state engineer~~department immediately may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the works, or ordering the landowner to remove or modify the works. Any assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this title. If, in the opinion of the ~~state engineer~~director, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by ~~action~~a decision of the ~~state engineer~~department under the provisions of this section may appeal the decision of the ~~state engineer~~ to the district court of the county in which the land is located in accordance with the ~~procedures provided under~~ chapter 28-32. A hearing ~~as provided for in~~under this section is a prerequisite to an appeal, unless the hearing was denied by the ~~state engineer~~department.

For purposes of this section, the term "works" includes dams, dikes, wells, or other devices for water conservation, flood control, regulation, storage, diversion, or carriage of water.

SECTION 62. AMENDMENT. Section 61-03-21.3 of the North Dakota Century Code is amended and reenacted as follows:

61-03-21.3. Removal, modification, or destruction of dangers in, on the bed of, or adjacent to navigable waters.

1. If the ~~state engineer~~department finds that buildings, structures, boat docks, debris, or other manmade objects, except a fence or corral, situated in, on the bed of, or adjacent to waters that have been determined to be navigable by a court are, or are likely to be, a menace to life or property or public health or

safety, the ~~state engineer department~~ may issue an order to the person responsible for the object. If the ~~state engineer department~~ issues an order, the order must specify the nature and extent of the conditions, the action necessary to alleviate, avert, or minimize the danger, and a date by which that action must be taken. If the ~~state engineer department~~ determines that an object covered by flood insurance is likely to be a menace to life or property or public health or safety, the date specified in the order for action to be taken may not precede the date on which the person is eligible to receive flood insurance proceeds. If a building, structure, boat dock, debris, or other manmade object, except a fence or corral, is partially or completely submerged due to the expansion of navigable waters, the person responsible is the person who owns or had control of the property on which the object is located or the person who owned or had control of the property immediately before it became submerged by water.

2. If the action is not taken by the date specified, but not less than twenty days from the date of service of the notice, the ~~state engineer department~~ may cause the action to be taken. The ~~state engineer department~~ may require the action to be taken in less than twenty days if an emergency exists.
3.
 - a. The ~~state engineer department~~ may bring an action to enforce an order of the ~~state engineer department~~, or if the ~~state engineer department~~ causes the action to be taken, the ~~state engineer department~~ may:
 - a. (1) Assess the costs of taking ~~such~~the action, or ~~such~~a portion of the costs as the ~~state engineer department~~ determines, against any property of the person responsible; or
 - b. (2) Bring a civil action against the person responsible to recover the costs incurred in taking the action.
 - b. If the ~~state engineer department~~ chooses to recover costs by assessing the cost against property of the person responsible and the property is insufficient to cover the costs incurred, the ~~state engineer department~~ may bring a civil action to recover any costs not recovered through the assessment process. Any assessments levied under this section must be collected in the same manner as other real estate taxes are collected and paid. Any costs recovered must be deposited in the fund from which the expenses were paid.
4. A person who receives an order, within ten days of the date of service of the order, may demand, in writing, a hearing on the matter. The demand for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the ~~state engineer department~~ determines the issues, facts, and law to be presented are well-founded and not frivolous, and the request for a hearing was not made merely to interpose delay, the ~~state engineer department~~ shall set a hearing date without undue delay.
5. In the event of an emergency, the ~~state engineer department~~ immediately may immediately apply to the district court of the county in which the property is located for an injunction ordering the person responsible to modify, remove, abate, or otherwise eliminate the dangerous condition.
6. Any person aggrieved by the action of the ~~state engineer department~~ may appeal the decision to the district court of the county in which the land is

located in accordance with chapter 28-32. A hearing ~~as provided for in under~~ this section is a prerequisite to an appeal unless the hearing was denied by the ~~state engineer~~department.

7. If the ~~state engineer~~department has issued an order under this section with regard to a building, structure, boat dock, debris, or other manmade object that the ~~state engineer~~department has determined is likely to be a menace to life or property or public health or safety, and it later becomes known that the object would not have become a menace, a person who has taken action required by the ~~state engineer's~~ order is entitled to compensation in an amount equal to the value of any property destroyed and reasonable costs incurred as a result of complying with the ~~state engineer's~~ notice from the department.
8. Any person claiming compensation for the destruction of property or costs incurred under subsection 7 must file a claim with the ~~state engineer~~department in the form and manner required by the ~~state engineer~~department. Unless the amount of compensation is agreed to between the claimant and the ~~state engineer~~department, the amount of compensation must be calculated in the same manner as compensation due for taking of property pursuant to the condemnation laws of this state. In determining compensation, the proceeds of any flood or other insurance or any other kind of compensatory payments must be subtracted from the amount paid.

SECTION 63. AMENDMENT. Section 61-03-21.4 of the North Dakota Century Code is amended and reenacted as follows:

61-03-21.4. Economic analysis process required for certain projects.

The ~~state engineer~~department of water resources shall develop an economic analysis process for water conveyance projects and flood-related projects expected to cost more than one million dollars, and a life cycle analysis process for municipal water supply projects. When the state water commission is considering whether to fund a water conveyance project, flood-related project, or water supply project, the ~~state engineer~~department of water resources shall review the economic analysis or life cycle analysis, and inform the state water commission of the findings from the analysis and review.

SECTION 64. AMENDMENT. Section 61-03-22 of the North Dakota Century Code is amended and reenacted as follows:

61-03-22. Hearing - Appeals from decision of ~~state engineer~~department.

Any person aggrieved by an action or decision of the ~~state engineer~~department under this title has the right to a hearing. The ~~state engineer~~department must receive ~~the~~ request for a hearing within thirty days after the aggrieved person knew or ~~reasonably~~ should have ~~reasonably~~ known of the action or decision. Once a hearing has been held or if the hearing request is denied, the person aggrieved has the right to petition for reconsideration or appeal under chapter 28-32.

SECTION 65. AMENDMENT. Section 61-03-23 of the North Dakota Century Code is amended and reenacted as follows:

61-03-23. Penalties - Civil.

1. In addition to criminal sanctions that may be imposed pursuant to law, a person who violates any provision of this title or any rules adopted under this title may be assessed a civil penalty not to exceed twenty-five thousand dollars for each day the violation occurred and continues to occur and may be required by the state-engineerdepartment to forfeit any right to the use of water. The civil penalty for violation of an irrigation appropriation permit may not exceed five thousand dollars for each day the violation occurred and continues to occur. The civil penalty or forfeiture of a right to use water may be adjudicated by the courts or by the state-engineerdepartment through an administrative hearing under chapter 28-32.
2. If a civil penalty levied by the state-engineerdepartment after an administrative hearing is not paid within thirty days after a final determination that the civil penalty is owed, the civil penalty may be assessed against the property of the landowner responsible for the violation leading to the assessment of the penalty. The assessment must be collected as other assessments made under this title are collected. Notwithstanding the provisions of section 57-20-22, all interest and penalties due on the assessment must be paid to the state. Any civil penalty assessed under this section must be in addition to any costs incurred by the state-engineerdepartment for enforcement of the order.

SECTION 66. AMENDMENT. Section 61-03-24 of the North Dakota Century Code is amended and reenacted as follows:

61-03-24. Pending administrative actions and permits.

If an applicant for any permit processed by the state-engineerdepartment has an unresolved administrative order or complaint under this title, the permit ~~will~~may not be processed until the order is complied with or complaint is resolved. At the ~~state-engineer's discretion of the department~~, the permit may be processed if issuing the permit would resolve the administrative order or complaint. If an applicant is not an individual, this section applies if the applicant is at least twenty-five percent owned by an individual with an unresolved administrative order or complaint under this title.

SECTION 67. AMENDMENT. Section 61-03-25 of the North Dakota Century Code is amended and reenacted as follows:

61-03-25. Emergency action plan - High-hazard or medium-hazard dam.

The owner of a high-hazard or medium-hazard dam shall develop, periodically test, and update an emergency action plan to be implemented if there is an emergency involving the dam. The emergency action plan and any subsequent updates must be submitted to the state-engineerdepartment for approval.

SECTION 68. AMENDMENT. Section 61-04-01 of the North Dakota Century Code is amended and reenacted as follows:

61-04-01. Petitions, reports, surveys, and other documents filed with the commission.

Any petitions, applications, surveys, reports, orders, or other documents provided for in this chapter must be filed with the commission in Bismarck, where they must be kept on file under the control of the state-engineerdirector of the department of water resources.

³³⁵ **SECTION 69. AMENDMENT.** Subsection 1 of section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. "Adjudicative proceeding" means an appeal under chapter 28-32 of a recommended decision prepared by the state engineer~~director of the department of water resources~~ for a water permit application.

³³⁶ **SECTION 70. AMENDMENT.** Subsection 15 of section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

15. "Perfected water permit" means a water permit where the water appropriated under a conditional water permit has been applied to a beneficial use and the state engineer~~department of water resources~~ has inspected the works to verify all conditions have been met.

SECTION 71. AMENDMENT. Section 61-04-02 of the North Dakota Century Code is amended and reenacted as follows:

61-04-02. Permit for beneficial use of water required.

Any person, before commencing any construction for the purpose of appropriating waters of the state or before taking waters of the state from any constructed works, shall first secure a water permit from the state engineer~~department of water resources~~ unless ~~such~~the construction or taking from ~~such~~the constructed works is for domestic or livestock purposes or for fish, wildlife, and other recreational uses or unless otherwise provided by law. However, immediately upon completing any constructed works for domestic or livestock purposes or for fish, wildlife, and other recreational uses, the water user shall notify the state engineer~~department of water resources~~ of the location and acre-feet [1233.48 cubic meters] capacity of ~~such~~the constructed works, dams, or dugouts. Regardless of proposed use, ~~however~~, all water users, except those reusing fossil byproduct water, shall secure a water permit prior to constructing an impoundment capable of retaining more than twelve and one-half acre-feet [15418.52 cubic meters] of water or the construction of a well from which more than twelve and one-half acre-feet [15418.52 cubic meters] of water per year will be appropriated. If a permit is not required of a landowner or the landowner's lessee to appropriate less than twelve and one-half acre-feet [15418.52 cubic meters] of water from any source for domestic or livestock purposes or for fish, wildlife, and other recreational uses, those appropriators may apply for water permits in order to clearly establish a priority date, and the state engineer~~department of water resources~~ may waive any fee or hearing for ~~such~~the applications. An applicant for a water permit to irrigate need not be the owner of the land to be irrigated.

SECTION 72. AMENDMENT. Section 61-04-02.1 of the North Dakota Century Code is amended and reenacted as follows:

61-04-02.1. Emergency or temporary authorization.

The state engineer~~department of water resources~~ may authorize emergency or temporary use of water for periods not to exceed twelve months if the state engineer~~department~~ determines ~~such~~the use will not be to the detriment of existing rights. The state engineer~~department~~ shall establish by rule a separate procedure for

³³⁵ Section 61-04-01.1 was also amended by section 70 of House Bill No. 1353, chapter 488.

³³⁶ Section 61-04-01.1 was also amended by section 69 of House Bill No. 1353, chapter 488.

the processing of applications for emergency or temporary use. ~~No prescriptive or~~Prescriptive and other rights to the use of water ~~shall~~may not be acquired by use of water as authorized ~~herein~~in this section.

SECTION 73. AMENDMENT. Section 61-04-02.2 of the North Dakota Century Code is amended and reenacted as follows:

61-04-02.2. Property interest required to hold a water permit.

A permit holder ~~shall~~must have a legal interest in each point of diversion identified on the permit. If the permit holder does not have a legal interest in each point of diversion, the ~~state engineer~~department of water resources shall assign the permit, or portion of the permit, as provided in this chapter to the title owner.

A permit holder ~~shall~~must have a legal interest in each irrigated tract of land identified on the permit. If the permit holder does not have a legal interest in each irrigated tract of land, the permit holder may transfer the approved acres to other land, as provided in this chapter.

SECTION 74. AMENDMENT. Section 61-04-03 of the North Dakota Century Code is amended and reenacted as follows:

61-04-03. Water permit application - Contents - Information to accompany.

A permit application to make beneficial use of any waters of the state must be in the form required by the rules established by the ~~state engineer~~department of water resources. The rules ~~shall~~must prescribe the form and contents of, and the procedure for filing, the application. The application, along with all other information filed with it, must be retained with the commission after approval or disapproval of the application. The ~~state engineer~~department of water resources may require additional information not provided for in the general rules if the ~~state engineer~~department deems it to be ~~the~~information necessary.

SECTION 75. AMENDMENT. Section 61-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-04-03.1. Limitation on amount of water.

~~An individual~~An applicant may not apply for a permit or permits for irrigation which, if approved, would enable ~~the individual~~a person, at any one time, to hold a conditional water permit or permits for more than seven hundred twenty acre-feet [888106.75 cubic meters] of water ~~which~~that has not been applied to beneficial use. Applications submitted in violation of this section may not be assigned a priority date and must be returned to the applicant by the ~~state engineer~~department of water resources. This section may not apply to water permit applications from the Missouri River or to applications submitted by irrigation districts organized pursuant to this title. For the purposes of this section, ~~an individual means any person, including the person's~~person", when applied to an individual, means the individual and the individual's spouse and dependents within the meaning of the Internal Revenue Code [26 U.S.C. 152].

SECTION 76. AMENDMENT. Section 61-04-04 of the North Dakota Century Code is amended and reenacted as follows:

61-04-04. Filing and correction of application.

The date of receipt of the application provided for in section 61-04-03 in the commission ~~shall~~must be noted on the application. If the application is defective as to form, incomplete, or otherwise unsatisfactory, it must be returned with a statement of the corrections, amendments, or changes required, within thirty days after its receipt, and sixty days must be allowed for refiling. If the application is corrected as required and is refiled within the time allowed, ~~it~~the application, upon being accepted, must take priority as of the date of its original filing. Any corrected application filed after the time allowed must be treated in all respects as an original application received on the date of its refiling. The application may be amended by the applicant at any time prior to the commencement of administrative action by the ~~state engineer~~department of water resources as provided in sections 61-04-05 through 61-04-06.3.

SECTION 77. AMENDMENT. Section 61-04-04.1 of the North Dakota Century Code is amended and reenacted as follows:

61-04-04.1. Application fees.

The following fees must accompany a conditional water permit application and must be paid by the ~~state engineer~~department of water resources into the resources trust fund of the state treasury:

- | | |
|---|---------|
| 1. For municipal or public use | \$500 |
| 2. For irrigation use | \$500 |
| 3. For industrial use of one acre-foot [1233.48 cubic meters] or less | \$250 |
| 4. For industrial use in excess of one acre-foot [1233.48 cubic meters] | \$1,000 |
| 5. For recreation, livestock, or fish and wildlife | \$100 |
| 6. Water permit amendment | \$100 |

SECTION 78. AMENDMENT. Section 61-04-04.2 of the North Dakota Century Code is amended and reenacted as follows:

61-04-04.2. Refund of water permit application fees.

The ~~state engineer~~department of water resources may refund a water permit application fee, upon the request of the applicant, if the application is withdrawn by the applicant, and:

1. The ~~state engineer~~department has not published notice of the application; or
2. The ~~state engineer~~department determines other good and sufficient cause exists to refund the application fee.

SECTION 79. AMENDMENT. Section 61-04-04.3 of the North Dakota Century Code is amended and reenacted as follows:

61-04-04.3. Rejection of applications.

If the ~~state engineer~~department of water resources determines a conditional water permit application does not meet this chapter's requirements or the rules in North Dakota Administrative Code article 89-03, the ~~state engineer~~department shall reject the application and decline to order the publication of notice of application.

SECTION 80. AMENDMENT. Section 61-04-05 of the North Dakota Century Code is amended and reenacted as follows:

61-04-05. Notice of application - Contents - Proof - Failure to file satisfactory proof.

When an application is filed which complies with this chapter and the rules adopted under this chapter, the ~~state engineer~~department of water resources shall instruct the applicant to:

1. Give notice of the application by certified mail in the form prescribed by rule, to all record title owners of real estate within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site, except:
 - a. If the one-mile [1.61-kilometer] radius extends within the geographical boundary of a city, the notice must be given to the governing body of the city and no further notice need be given to the record title owners of real estate within the geographical boundary of the city.
 - b. If the one-mile [1.61-kilometer] radius includes land within the geographical boundary of a rural subdivision where the lots are of ten acres [4.04 hectares] or less, the notice must be given to the governing body of the township or other governing authority for the rural subdivision and no further notice need be given to the record title owners of real estate within the geographical boundary of the rural subdivision.
 - c. If the one-mile [1.61-kilometer] radius includes a single tract of rural land which is owned by more than ten individuals, the notice must be given to the governing body of the township or other governing authority for that tract of land and no further notice need be given to the record title owners of that tract.
2. Give notice of the application by certified mail in the form prescribed by rule to all persons holding water permits for the appropriation of water from appropriation sites located within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site. The ~~state engineer~~department of water resources shall provide a list of all persons who must be notified under this subsection to the applicant.
3. Give notice of the application by certified mail in the form prescribed by rule to all municipal or public use permitholders within a twelve-mile [19.32-kilometer] radius of the proposed water appropriation site. The ~~state engineer~~department of water resources shall provide a list of all municipal or public use permitholders that must be notified under this subsection to the applicant.
4. Provide the ~~state engineer~~department of water resources with an affidavit of notice by certified mail within sixty days from the date of the ~~engineer's department's~~ instructions to provide notice. If the applicant fails to file satisfactory proof of notice by certified mail within sixty days and in compliance with the applicable rules, the ~~state engineer~~department shall treat the application as an original application filed on the date of receipt of the affidavit of notice by certified mail in proper form. If a properly completed affidavit of notice is not submitted within one hundred twenty days, the ~~state engineer~~department shall consider the application withdrawn. Upon receipt of a proper affidavit of notice by certified mail, the ~~state engineer~~department shall publish notice of the application, in a form prescribed by rule, in the official

newspaper of the county in which the proposed appropriation site is located, once a week for two consecutive weeks.

5. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and the date by which written comments and requests for an informational hearing regarding the proposed appropriation must be filed with the state engineer department of water resources. The notice also must also state that anyone who files written comments with the state engineer department will be mailed the state engineer's department's recommended decision on the application. Persons filing written comments will become a party of record to the application. The comment deadline is five p.m. on the first business day thirty days after the first published notice in the official county newspaper as specified in subsection 4.
6. The applicant shall pay all costs of the publication of notice.

SECTION 81. AMENDMENT. Section 61-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

61-04-05.1. Comments - Hearing.

1. Comments regarding a proposed appropriation must be in writing and filed by the date specified by the state engineer department of water resources under subsection 5 of section 61-04-05. The comments must state the name and mailing address of the person filing the comments. Comment letters submitted electronically must state the name and mailing address of the person filing the comments, and must be signed by the submitter to be considered valid and part of the official record.
2. A person filing written comments also may also request an informational hearing on the application by the date specified by the state engineer department of water resources under subsection 5 of section 61-04-05. If a request for an informational hearing is made and if the state engineer department determines an informational hearing is necessary to obtain additional information to evaluate the application or to receive public input, the state engineer department shall designate a time and place for the informational hearing and serve a notice of hearing upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.
3. If two or more municipal or public use permitholders request the informational hearing to be held locally, the state engineer department of water resources shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.
4. The state engineer department of water resources shall consider all written comments received and testimony presented at an informational hearing, if held, and shall make a recommended decision in writing. The recommended decision must be mailed to the applicant and any party of record and may constitute:
 - a. Approval of all or a portion of the application, with the remainder held in abeyance or denied;

- b. Denial of the application; or
 - c. Deferral of the application.
5. Within thirty days of service of the recommended decision, the applicant and any party of record who would be aggrieved by the decision may file additional written comments with the ~~state engineer~~department of water resources or request an adjudicative proceeding on the application, or both. A request for an adjudicative proceeding must be made in writing and must state with particularity how the person would be aggrieved by the decision and the issues and facts to be presented at the proceeding. If a request for an adjudicative proceeding is not made, the ~~state engineer~~department shall consider the additional comments, if any are submitted, and issue a final decision. If a request for an adjudicative proceeding is made, and if the ~~state engineer~~department determines an adjudicative proceeding is necessary, the ~~state engineer~~department shall designate a time and place for the adjudicative proceeding and serve the notice of adjudicative proceeding upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.

SECTION 82. AMENDMENT. Section 61-04-06 of the North Dakota Century Code is amended and reenacted as follows:

61-04-06. Criteria for issuance of permit.

1. The ~~state engineer~~department of water resources shall issue a permit if the ~~state engineer~~department finds all of the following:
 - a. The rights of a prior appropriator will not be unduly affected.
 - b. The proposed means of diversion or construction are adequate.
 - c. The proposed use of water is beneficial.
 - d. The proposed appropriation is in the public interest. In determining the public interest, the ~~state engineer~~department shall consider all of the following:
 - (1) The benefit to the applicant resulting from the proposed appropriation.
 - (2) The effect of the economic activity resulting from the proposed appropriation.
 - (3) The effect on fish and game resources and public recreational opportunities.
 - (4) The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.
 - (5) Harm to other persons resulting from the proposed appropriation.
 - (6) The intent and ability of the applicant to complete the appropriation.

2. Subsection 1 of section 28-32-38 does not apply to water permit application proceedings unless a request for an adjudicative proceeding is made. If an application is approved, the ~~state engineer department of water resources~~ shall issue a conditional water permit allowing the applicant to appropriate water. However, the commission, by resolution, may reserve unto itself final approval authority over any specific water permit in excess of five thousand acre-feet [6167409.19 cubic meters].

SECTION 83. AMENDMENT. Section 61-04-06.1 of the North Dakota Century Code is amended and reenacted as follows:

61-04-06.1. Preference in granting permits.

When there are competing applications for water from the same source, and the source is insufficient to supply all applicants, the ~~state engineer department of water resources~~ shall adhere to the following order of priority:

1. Domestic use.
2. Municipal or public use.
3. Livestock use.
4. Irrigation use.
5. Industrial use.
6. Fish, wildlife, and other recreational uses.

³³⁷ **SECTION 84. AMENDMENT.** Section 61-04-06.2 of the North Dakota Century Code is amended and reenacted as follows:

61-04-06.2. Terms of permit.

The ~~state engineer department of water resources~~ may issue a conditional water permit for less than the amount of water requested. Except for water permits for incorporated municipalities or rural water systems, the ~~state engineer department~~ may not issue a permit for more water than can be beneficially used for the purposes stated in the application. Water permits for incorporated municipalities or rural water systems may contain water in excess of present needs based upon what may reasonably be necessary for the future water requirements of the municipality or the rural water system. The ~~state engineer department~~ may require modification of the plans and specifications for the appropriation. The ~~state engineer department~~ may issue a permit subject to fees for water use and conditions the ~~state engineer department~~ considers necessary to protect the rights of others and the public interest. The fees must be used by the department for planning, research, and administration required to regulate the allocation and appropriation of the waters of the state. Conditions must be related to matters within the ~~state engineer's department's~~ jurisdiction. All conditions attached to any permit issued before July 1, 1975, are binding upon the permit holder.

SECTION 85. AMENDMENT. Section 61-04-06.3 of the North Dakota Century Code is amended and reenacted as follows:

³³⁷ Section 61-04-06.2 was also amended by section 14 of Senate Bill No. 2035, chapter 56.

61-04-06.3. Priority.

Priority in time gives the superior water right. Priority of a water right acquired under this chapter dates from the filing of an application with the ~~state-engineer~~department of water resources, except for water applied to domestic or livestock purposes, or fish, wildlife, and other recreational uses in which case the priority date must relate back to the date when the quantity of water in question was first appropriated, unless otherwise provided by law.

Priority of appropriation does not include the right to prevent changes in the condition of water occurrence, such as the increase or decrease of streamflow, or the lowering of a water table, artesian pressure, or water level, by later appropriators, if the prior appropriator can acquire reasonably the prior appropriator's water under the changed conditions.

SECTION 86. AMENDMENT. Section 61-04-07.2 of the North Dakota Century Code is amended and reenacted as follows:

61-04-07.2. Conditional water permit application denial.

If the ~~state-engineer~~department of water resources determines an application or any portion of an application does not meet the criteria prescribed in section 61-04-06 for any reason other than sufficient information or data is lacking to allow for sound decisionmaking of the impacts of the proposed diversion on the prior appropriators, the resource, or the public interest, the application or portion must be denied.

SECTION 87. AMENDMENT. Section 61-04-07.3 of the North Dakota Century Code is amended and reenacted as follows:

61-04-07.3. Conditional water permit application deferral.

If the ~~state-engineer~~department of water resources determines an application or any portion of an application does not meet the criteria prescribed in section 61-04-06 because sufficient information or data is lacking to allow for sound decisionmaking of the impacts of the proposed diversion on the prior appropriators, the resource, or the public interest, the conditional water permit application must be placed in a deferred status. The applicant must be notified by mail the application has been placed in deferred status.

SECTION 88. AMENDMENT. Section 61-04-09 of the North Dakota Century Code is amended and reenacted as follows:

61-04-09. Application to beneficial use - Inspection - Perfected water permit.

After the permit's beneficial use date, or upon notice from the permitholder that water has been applied to a beneficial use, the ~~state-engineer~~department of water resources shall notify the conditional water permitholder and inspect the works. The inspection must determine the safety, efficiency, and actual capacity of the works. If the works are not ~~constructed~~ properly and safely ~~constructed~~, the ~~state-engineer~~department may require the necessary changes to be made within a reasonable time. Failure to make the changes within the time prescribed by the ~~state-engineer~~ ~~shall caused~~department will result in postponement of the permit's priority date to the date the changes are made to the satisfaction of the ~~state-engineer~~department. Any intervening application submitted before the date the changes are made will have the benefit of the postponement of priority. When the works are ~~constructed~~ properly and safely ~~constructed~~ and inspected, the ~~state-engineer~~department shall issue the perfected water permit, setting forth the actual

capacity of the works and the limitations or conditions upon the water permit as stated in the conditional water permit authorized by section 61-04-06.2. All conditions attached to any permit issued before July 1, 1975, are binding upon the permitholder.

SECTION 89. AMENDMENT. Section 61-04-11 of the North Dakota Century Code is amended and reenacted as follows:

61-04-11. Inspection of works.

If the state engineerdepartment of water resources, in the course of the state engineer'sdepartment's duties, finds any works used for the storage, diversion, or carriage of water are unsafe and a menace to life or property, the state engineerdepartment shall notify the owner or the owner's agent, specifying the changes necessary and allowing a reasonable time for putting the works in safe condition. Upon the request of any party, accompanied by the estimated cost of inspection, the state engineerdepartment shall inspect any alleged unsafe works. If they shall be the works are found unsafe by the state engineerdepartment, the money deposited by the party must be refunded, and the fees for inspection must be paid by the owner of suchthe works. If the fees are not paid by the owner of the works does not pay the fees within thirty days after the decision of the state engineerdepartment, theythe fees must be a lien against any property of the owner, and must be recovered by a suit instituted by the state's attorney of the county shall initiate a suit to recover the fees from the owner at the request of the state engineerdepartment. The state engineer, when in the state engineer's opinion it is necessary, department may inspect any works under construction for the storage, diversion, or carriage of water and may require any changes necessary to secure theirthe safety of the works. The fees for the inspection must be a lien on any property of the owner and must be subject to collection as provided in this chapter but neither the United States nor the state of North Dakota nor any government agency may be required to pay such fees.

SECTION 90. AMENDMENT. Section 61-04-12 of the North Dakota Century Code is amended and reenacted as follows:

61-04-12. Use of unsafe works - Penalty.

Any person using works for the storage, diversion, or carriage of water, at any time after an inspection thereof the works by the state engineerdepartment of water resources and receipt of notice from the state engineerdepartment that the same works are unsafe for the purpose for which theythe works are used; and until before the receipt of notice from the state engineerdepartment that in the state engineer's opinion theythe department deems the works to have been made safe, shall be is guilty of a class A misdemeanor.

SECTION 91. AMENDMENT. Section 61-04-14 of the North Dakota Century Code is amended and reenacted as follows:

61-04-14. Extending time for application to beneficial use.

The state engineerdepartment of water resources may extend the time for the application of water to the beneficial use cited in the conditional water permit for good cause shown. When the time has expired, the state engineerdepartment may renew and extend the same time upon application; provided, however. However, a conditional water permit, or any portion of the application must be considered forfeited if no request for renewal is received by the state engineerdepartment within sixty days after the date the permitholder is informed the period for applying water to the beneficial use cited in the conditional water permit has expired. If a request to extend the time for application to beneficial use for any conditional water permit, or portion of

the permit, is denied, the conditional water permit, or portion of the permit, must be considered forfeited. Sections 61-04-23 through 61-04-25 do not apply to this section.

SECTION 92. AMENDMENT. Section 61-04-15 of the North Dakota Century Code is amended and reenacted as follows:

61-04-15. Assignment of conditional or perfected water permit.

Any conditional or perfected water permit may be assigned only upon approval by the ~~state engineer~~department of water resources. Upon reasonable proof the assignment can be made without detriment to existing rights, the ~~state engineer~~department shall assign the water permit without losing priority of any right previously established. The transfer of title to land in any manner ~~whatsoever~~ must carry with it all rights to the use of water for irrigation of the land, except any conditional or perfected water permit for irrigation purposes must be assigned in accordance with this section.

SECTION 93. AMENDMENT. Section 61-04-15.2 of the North Dakota Century Code is amended and reenacted as follows:

61-04-15.2. Add a point of diversion.

A permitholder may add a point of diversion to a conditional or perfected permit without affecting the priority date, if approved by the ~~state engineer~~department of water resources. Applications to add a point of diversion must be processed and evaluated in the same manner as a conditional water permit application. The ~~state engineer~~department may approve the additional point of diversion if the proposed addition will not adversely affect the rights of other appropriators.

SECTION 94. AMENDMENT. Section 61-04-15.3 of the North Dakota Century Code is amended and reenacted as follows:

61-04-15.3. Transfer of approved irrigated acreage.

A permitholder may transfer acres approved for irrigation on a conditional or perfected water permit to any tract of land owned or leased by the permitholder without affecting the priority date, if approved by the ~~state engineer~~department of water resources. The ~~state engineer~~department shall cause the water permit involved to be simultaneously severed and transferred from ~~such~~the land.

SECTION 95. AMENDMENT. Section 61-04-15.4 of the North Dakota Century Code is amended and reenacted as follows:

61-04-15.4. Change in purpose of use.

A permitholder may change the purpose of use of a conditional or perfected water permit without affecting the priority date, if approved by the ~~state engineer~~department of water resources. Applications for a change in the purpose of use must be processed and evaluated in the same manner as a conditional water permit application. A change in the purpose of use may be authorized only for a superior use as determined by the order of priority in section 61-04-06.1. The ~~state engineer~~department may approve the proposed change if the proposed change will not adversely affect the rights of other appropriators.

SECTION 96. AMENDMENT. Section 61-04-23 of the North Dakota Century Code is amended and reenacted as follows:

61-04-23. Cancellation of water rights - Inspection of works.

Any appropriation of water must be for a beneficial use, and when the appropriator fails to apply it to the beneficial use cited in the permit or ceases to use it for the beneficial use cited in the permit for three successive years, unless the failure or cessation of use has been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the ~~state engineer~~department of water resources may cancel the water permit or right. For purposes of this chapter, an incorporated municipality or rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit reasonably may be necessary for the future water requirements of the municipality or the rural water system. The ~~state engineer~~department of water resources, as often as necessary, shall examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of every water permit or right and all ditches and other works constructed or partially constructed under the permit or right.

SECTION 97. AMENDMENT. Subsection 1 of section 61-04-24 of the North Dakota Century Code is amended and reenacted as follows:

1. If it appears any water appropriation or portion of an appropriation has not been used for a beneficial use, or having been so used at one time has ceased to be used for that purpose for more than three successive years, unless the failure or cessation of use is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the ~~state engineer~~department of water resources shall set a place and time for a hearing. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit reasonably may be necessary for the future water requirements of the municipality or the rural water system. Any permitholder using water from a common source of supply, any applicant for a permit to use water from a common source of supply, or any interested party may request the ~~state engineer~~department of water resources to conduct a hearing to cancel any unused water rights to the common source of supply. Any decision of the ~~state engineer~~department in denying a request for a hearing may be appealed in accordance with chapter 28-32. Prior to the hearings, the ~~state engineer~~department shall serve notice upon the permitholder and upon the owners of land benefited by the appropriation or works, except where the lands benefited are within the geographical boundaries of a city, in which case notice must be given to the governing body of the city, to show cause by a time and at a place why the water appropriation or a portion of the appropriation should not be canceled.

SECTION 98. AMENDMENT. Section 61-04-25 of the North Dakota Century Code is amended and reenacted as follows:

61-04-25. Cancellation of water rights - Hearing - Appeal.

At the hearing the recommended decision of the ~~state engineer~~department of water resources is prima facie evidence for cancellation of the water permit or portion of the permit. If no one appears at the hearing, the water permit or portion must be canceled. If interested parties appear and contest the cancellation, the ~~state engineer~~department shall hear the evidence and, if it appears that the water has not been put to a beneficial use, or, having been so used put to a beneficial use at one time, has ceased to be used for the purpose for more than three successive years, unless the failure or cessation of use is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the permit, or a portion of the permit, must be canceled. For purposes of this chapter, an incorporated

municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit reasonably may be necessary for the future water requirements of the municipality or the rural water system. An appeal may be taken from the decision of the state-engineerdepartment in accordance with chapter 28-32.

SECTION 99. AMENDMENT. Section 61-04-26 of the North Dakota Century Code is amended and reenacted as follows:

61-04-26. Recorder to record water permit or order affecting water right.

A water permit may be recorded as any other instrument affecting the title to real property without acknowledgment or further proof. The order canceling a water right, or portion of a water right must be filed by the state-engineerdepartment of water resources with the county recorder where the affected land is located; and ~~it shall be~~ recorded as any other instrument affecting the title to real property without acknowledgment or further proof. Any document filed under this section must be listed in the index of the property affected as provided in section 11-18-07.

SECTION 100. AMENDMENT. Section 61-04-27 of the North Dakota Century Code is amended and reenacted as follows:

61-04-27. Information filed with state-engineerdepartment of water resources - Installation of measuring devices.

By March thirty-first of each year, permitholders shall file with the state-engineerdepartment of water resources, on forms supplied by the state-engineerdepartment, water use and other information as the state-engineerdepartment requires. The state-engineerdepartment also may require permitholders to install measuring devices conforming to the state-engineer'sdepartment's specifications, at all points specified by the state-engineerdepartment.

SECTION 101. AMENDMENT. Section 61-04-28 of the North Dakota Century Code is amended and reenacted as follows:

61-04-28. Correction of application or water right by state-engineerdepartment of water resources.

Upon proof satisfactory to the state-engineerdepartment of water resources that a water permit application or water permit contains a nonmaterial error, the state-engineer-maydepartment, by written notice to the holder of the affected water permit or application, may correct the error without publication of notice.

SECTION 102. AMENDMENT. Section 61-04-29 of the North Dakota Century Code is amended and reenacted as follows:

61-04-29. Enforcement.

The state-engineerdepartment of water resources has full power and authority to institute, maintain, and prosecute to determination in an administrative proceeding or any of the courts of this state, or in any of the federal courts, any and all actions, suits, and special proceedings that may be necessary to enjoin unauthorized use of water, enforce an order of the state-engineerdepartment or the commission, or otherwise administer the provisions of this chapter. Notwithstanding any other provision of law, the state-engineerdepartment of water resources may issue administrative orders requiring the immediate cessation of water use when the state

~~engineer~~~~department~~ has a reasonable belief the use is unauthorized or continued use will damage the rights of prior appropriators.

SECTION 103. AMENDMENT. Section 61-04-30 of the North Dakota Century Code is amended and reenacted as follows:

61-04-30. Penalty.

A person who constructs works for an appropriation, or diverts, impounds, withdraws, or uses a significant amount of water from any source without a permit specifically authorizing such action, except as otherwise provided in section 61-04-02; who violates an order of the ~~state engineer~~department of water resources; who fails or refuses to install meters, gauges, or other measuring devices or to control works; who violates an order establishing corrective controls for an area or for a source of water; who violates the terms of the permit; or who knowingly makes a false or misleading statement in a declaration of existing rights is guilty of a class A misdemeanor. As used in this section, "significant amount of water" means any amount of water in excess of that allowed in a valid water permit, or any amount of water in excess of the needs for domestic and livestock purposes where no permit has been issued. The ~~state engineer~~department of water resources shall inform the tax commissioner of violations of industrial use permits.

SECTION 104. AMENDMENT. Section 61-04-31 of the North Dakota Century Code is amended and reenacted as follows:

61-04-31. Reservation of waters - Public hearing - Notice.

1. Whenever it appears necessary to the ~~state engineer~~department of water resources, or when directed by the commission, the ~~state engineer~~department may ~~by regulation~~ reserve and set aside waters by regulation for beneficial use in the future.
 - a. Before the adoption of a regulation under this section, the ~~state engineer~~department shall conduct a public hearing in each county where waters relating to the regulation are located. At least seven days before the date set for the public hearing, a notice must be published in the official county newspapers within each of the counties.
 - b. Regulations adopted hereunder are subject to chapter 28-32.
2. When sufficient information or data is lacking to allow for sound decisionmaking on a water permit application, the ~~state engineer~~department of water resources may withdraw various waters of the state from additional appropriations until sufficient data or information is available. Water permit applications pending from these sources will be placed in a deferred status.

SECTION 105. AMENDMENT. Section 61-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-04. North Dakota atmospheric resource board created - Membership.

There is created a

1. The North Dakota atmospheric resource board which shall be a division of the state water commission. The board is composed of the director of the state aeronautics commission, a representative of the department of environmental quality, the ~~state engineer~~director of the department of water

resources, and one additional board member from each of seven districts established by section 61-04.1-05. The governor shall initially appoint one board member for each of the seven districts from a list of three candidates given to the governor by weather modification authorities in each district and:

- 1- a. When the term of office of any board member from any district is about to expire.
- 2- b. When a vacancy has occurred, or is about to occur, in the term of office of a board member from any district for any reason other than expiration of term of office.
2. Beginning on July 1, 1983, the term of office for the board ~~shall~~must be arranged so that ~~not less~~no fewer than three nor more than four terms shall expire on the first day of July of each odd-numbered year. ~~Therefore, board members appointed on July 1, 1983, from districts II, IV, and VI shall serve for two-year terms, and board members appointed on July 1, 1983, from districts I, III, V, and VII shall serve for four-year terms. Thereafter, board~~Board members from each district shall serve for a four-year term of office except in the event the governor ~~shall appoint~~appoints a member for an unexpired term, in which case the member shall serve only for the unexpired portion of the term. ~~In the event~~If any district fails to furnish a list to the governor, or if there are no weather modification authorities under this chapter within a district, the governor shall appoint a board member of the governor's choice residing within ~~such~~the district.

SECTION 106. AMENDMENT. Subsection 3 of section 61-05-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Irrigable acres" or "irrigable lands" means those lands which can or will be served by the district's works, as determined by the ~~state engineer~~department of water resources before the district is organized, or as determined from time to time by the district's board of directors. Whenever land or acreage is described as being susceptible of irrigation or subject to assessment, it means the same as irrigable acres.

SECTION 107. AMENDMENT. Section 61-05-07 of the North Dakota Century Code is amended and reenacted as follows:

61-05-07. Petition for a proposed irrigation district - Where filed - Signed by whom - Contents.

A petition for a proposed irrigation district ~~shall~~must be filed with the ~~state engineer~~department of water resources and ~~shall be~~ signed by landowners of the proposed district who together ~~shall~~ own a majority of the whole number of acres [hectares] subject to assessment for construction or other costs within the district requesting the territory described in ~~such~~the petition be organized under the provisions of this chapter. ~~Such~~The territory ~~shall~~must be described and ~~shall be~~ included in ~~such~~the district, if established, by legal governmental subdivisions of forty acres [16.19 hectares] or more unless held in fractional lots or plotted units of lesser size, or unless portions ~~thereof~~of the territory are more readily susceptible to irrigation from works other than those of the proposed district. The proposed district may include lands ~~which~~that are not contiguous to any other lands in the proposed district. ~~Such~~The petition ~~shall set forth~~must include the name and address of each petitioner and a description of the petitioner's land, and ~~the petition shall have attached thereto~~

a map or maps showing the boundaries of the proposed district must be attached to the petition.

SECTION 108. AMENDMENT. Section 61-05-08 of the North Dakota Century Code is amended and reenacted as follows:

61-05-08. Petition accompanied by map - Contents - Scale.

The petition provided for in section 61-05-07 ~~shall~~must be accompanied by a map or maps of the proposed district. The map ~~shall~~must show the location of the proposed conveyance systems and other works ~~by means of which it is intended to be used to~~ irrigate the lands of the proposed district. If the water supply is from a natural stream, the flow of ~~such~~the stream ~~shall~~must be stated in cubic feet [meters] per second. If the water supply for the district is to be gathered by a storage reservoir or reservoirs, the map ~~shall~~must show the location ~~thereof~~of the storage reservoir and and ~~shall state their~~the reservoir's capacity in acre-feet. If the water supply is from a ground water source, the map must show the general location of wells and proposed pumping rates. Unless otherwise permitted by the ~~state engineer~~department of water resources, ~~such~~the map ~~shall~~must be drawn to a scale of not less than two inches [5.08 centimeters] to the mile [1.61 kilometers]. Preliminary designs of all proposed conveyance systems and other works ~~shall~~must be prepared in sufficient detail to show the contemplated method of construction, along with a feasibility report on the proposed plan of irrigation. The feasibility report must include an analysis of the soil and water compatibility of the irrigable lands of the proposed district. A registered professional engineer shall prepare the map, preliminary designs, and feasibility report required by this section.

SECTION 109. AMENDMENT. Section 61-05-09 of the North Dakota Century Code is amended and reenacted as follows:

61-05-09. Petition accompanied by bond - Approval of bond - Certified copy of petition filed.

Unless otherwise permitted by the ~~state engineer~~department of water resources, the petition ~~shall~~must be accompanied by a good and sufficient bond to be approved by the ~~state engineer, which shall~~department of water resources. The bond must be in double the amount of the probable cost of organizing ~~such~~the district; including the cost of the first election for the organization of the district ~~and shall. The bond also must~~ be conditioned that the sureties will pay all costs in case ~~said~~the organization ~~shall not be~~is not approved by the electors. Within ten days after the filing of ~~such~~the petition, and the approval of ~~such~~the bond, the ~~state engineer~~department of water resources shall file a copy of ~~such~~the petition with the county auditor of each county ~~wherein~~in which the proposed irrigation district is situated.

SECTION 110. AMENDMENT. Section 61-05-10 of the North Dakota Century Code is amended and reenacted as follows:

61-05-10. Hearing on petition - Notice - Report prepared by state engineer on feasibility - Copy of report filed - Submitted to electors.

The ~~state engineer~~department of water resources shall examine the petition, maps, papers, and data pertaining to the proposed irrigation district and shall fix a time and place for hearing ~~such~~the petition. A notice stating that ~~such~~the petition will be heard, and stating the time and place of hearing, ~~shall~~must be filed with the county auditor of each county ~~wherein~~in which the proposed district is located. The notice ~~shall~~must be published once each week for two consecutive weeks in the ~~newspaper or newspapers~~ of general circulation where the district is located and in

the official newspaper of each county in which the district is located. The date set for the hearing on the petition may not be less than twenty days after the first publication of the notice. ~~Prior to such~~Before the hearing the ~~state engineer~~department shall review the maps, preliminary designs, and feasibility study and shall prepare, or shall cause to be prepared, a summary report showing the probable cost of the proposed irrigation works and the practicability and feasibility of the plan of irrigation suggested or proposed by petitioners for the irrigation of the lands within ~~such~~the district. A copy of ~~such~~the report ~~shall~~must be filed with the county auditor of each county ~~wherein~~in which the proposed irrigation district is situated, and ~~such~~the report ~~shall~~must be open to public inspection. The ~~state engineer~~department of water resources also shall submit ~~such~~the report to the electors of the proposed district at the meeting set for hearing the petition for the organization ~~thereof~~of the proposed district.

SECTION 111. AMENDMENT. Section 61-05-11 of the North Dakota Century Code is amended and reenacted as follows:

61-05-11. Amendment of plan of irrigation - Adjournment of hearing by state engineerdepartment of water resources.

At the hearing provided in section 61-05-10, the ~~state engineer~~department of water resources may amend the plan of irrigation proposed in the petition provided in section 61-05-07. The ~~state engineer~~department may adjourn ~~such~~the hearing from time to time and may make ~~such~~ changes in the proposed boundaries of the district as the ~~state engineer~~department deems advantageous and advisable, but the boundaries of the district proposed in the petition for its organization ~~shall~~may not be enlarged or extended until the electors who own a majority of the acres [hectares] of land subject to assessments for construction or other costs to be included in the extension ~~having in writing consented thereto~~the enlargement or extension in writing.

SECTION 112. AMENDMENT. Section 61-05-12 of the North Dakota Century Code is amended and reenacted as follows:

61-05-12. State engineerDepartment of water resources may make order denying petition - Filing.

If the ~~state engineer~~department of water resources ~~determines~~determines the plan of irrigation proposed is not practicable or ~~that such plan is~~ not economically sound, the ~~state engineer~~department shall make an order denying the petition for the organization of an irrigation district and shall state the reasons for the action. A copy of ~~such~~the order ~~shall~~must be filed with the county auditor of each county in which the proposed irrigation district is situated.

SECTION 113. AMENDMENT. Section 61-05-13 of the North Dakota Century Code is amended and reenacted as follows:

61-05-13. ~~State engineer~~Order establishing irrigation district - Calling election - Dividing district - Contents of order.

1. If the ~~state engineer~~department of water resources determines that the establishment of the proposed irrigation district is advisable, and ~~that the~~ plan proposed for irrigating the lands ~~therein~~in the proposed district is practicable and economically sound, the ~~state engineer~~department shall make an order establishing the irrigation district, subject to the approval of the electors of the district at an election called by the ~~state engineer~~department for that purpose.

2. If the district embraces more than twenty thousand irrigable acres [8093.72 irrigable hectares] of land, the ~~state engineer~~department by the order shall divide the district into five or seven divisions or precincts as the ~~state engineer~~department determines necessary for the convenience of the electors of the district. The divisions or precincts must be numbered and as nearly equal in size as ~~may be deemed practicable, the divisions must be numbered, and one.~~ One director must be elected from, and by the electors of, each division. If an elector owns land in more than one division, the elector ~~must~~shall cast all the elector's votes for director and ~~be~~is eligible for election as a director in the division in which the majority of the elector's land subject to assessment lies.
3. The department's order must set forth:
 4. a. The time and place of holding the election.
 2. b. The boundaries of the district.
 3. c. That a petition sufficient in form and substance was filed with the ~~state engineer~~department of water resources.
 4. d. That due and reasonable notice of time and place of hearing on petition was given to the qualified electors of the proposed irrigation district.
 4. A copy of the order must be filed with the county auditor of each county in which the irrigation district is situated. The order is prima facie evidence of the matter and facts therein stated.

SECTION 114. AMENDMENT. Section 61-05-14 of the North Dakota Century Code is amended and reenacted as follows:

61-05-14. Notice of election by ~~state engineer~~ - Contents - Publication.

Upon making an order establishing an irrigation district, the ~~state engineer~~department of water resources shall give notice of an election to be held in ~~such~~the district for the purpose of determining whether or not to determine whether the electors of the district approve the establishment and organization thereof as ~~an of~~the irrigation district. The notice ~~shall~~must state that an elector desiring to be a candidate for the office of district director shall file the elector's name with the ~~state engineer~~department of water resources not less than twenty days before ~~such~~the election. The notice ~~shall~~must carry a reference to the map or maps previously filed with the county auditor describing the boundaries of the lands included in the district as established by the ~~state engineer~~department and shall designate a name for ~~such~~the district. The notice ~~shall~~must be filed with the county auditor of each county in which the proposed district is situated and shall be published once each week for two consecutive weeks in the ~~newspaper or newspapers~~ of general circulation where the district is located and in the official newspaper of each county in which the district is located. The date set for the election ~~shall~~must be not less than twenty-five, nor more than thirty-five, days after the first publication of the notice.

SECTION 115. AMENDMENT. Section 61-05-15 of the North Dakota Century Code is amended and reenacted as follows:

61-05-15. Form of notice of election.

The notice of election provided for in section 61-05-14 must be substantially in the following form:

NOTICE OF ELECTION

Notice is given that on _____, _____, an election will be held for the purpose of submitting to the electors within the territory established and described by the order of the ~~state engineer~~department of water resources as _____ irrigation district, the question as to whether the order of the ~~state engineer~~department of water resources establishing the irrigation district is approved. Notice is given that the lands of the district are fully described fully in the order of the ~~state engineer~~department of water resources establishing the district and filed in the ~~state engineer's department's~~ office in Bismarck, North Dakota, and in the office of the county auditor of _____ County, North Dakota. The ballot must be in the following form:

FOR IRRIGATION DISTRICT

Yes ☐

No ☐

Notice is further given that a board consisting of _____ directors will be elected, one from each district division, ~~who will~~to serve as provided by law after the establishment of the district is approved. Polls will be open from one p.m. to seven p.m. Notice is further given that any elector desiring to be a candidate for the office of district director and to have the elector's name appear on the ballot ~~must~~shall file the elector's request in writing with the ~~state engineer~~department of water resources not less than twenty days before the election.

Dated _____, _____.

Signed _____

~~State Engineer~~Director of the Department of Water Resources

SECTION 116. AMENDMENT. Section 61-05-16 of the North Dakota Century Code is amended and reenacted as follows:

61-05-16. ~~State engineer~~Department of water resources to appoint clerk and two judges of election - Filling vacancies on board.

Prior to the holding of an election upon the question of establishing and organizing an irrigation district, the ~~state engineer~~department of water resources shall appoint from the electors of the district one clerk and two judges ~~who shall~~to constitute a board of election for ~~such~~the district. If the district is divided into divisions or precincts, ~~such~~the board of election ~~shall~~must be appointed from the electors of each ~~such~~ division and shall serve as a board of election ~~therein~~for the district. If the members appointed do not attend at the opening of the polls on the day of election, the electors present at that hour may choose the members of the election board or fill the place of an absent member ~~thereof~~of the election board.

SECTION 117. AMENDMENT. Section 61-05-17 of the North Dakota Century Code is amended and reenacted as follows:

61-05-17. Conduct of election - Votes canvassed by board and state engineerdepartment of water resources - Retaining ballots.

An election upon the question of organizing an irrigation district ~~shall~~must be conducted in accordance with the general election laws of the state. After the polls are closed, the election board shall proceed to canvass the votes cast thereat, and the clerk of the election board shall certify to the ~~state engineerdepartment of water resources~~ the result of ~~suchthe~~ election. The clerk of the board then shall wrap securely the ballots cast at ~~suchthe~~ election and shall express or mail the ~~same~~secured ballots by registered or certified mail to the ~~state engineerwhodepartment, which~~ also shall canvass the ballots and verify the result. The ~~state engineerdepartment~~ shall file and retain in the ~~state engineer'sdepartment's~~ office the ballots cast at ~~suchthe~~ election.

SECTION 118. AMENDMENT. Section 61-05-18 of the North Dakota Century Code is amended and reenacted as follows:

61-05-18. Election governing organization of district - Filing record of election - Certificates of election to directors.

If, upon a canvass of the votes cast and after ~~such~~After the canvass of votes has been verified by the ~~state engineerit appears that~~department of water resources, if a majority of all votes cast are in favor of the organization of an irrigation district, the ~~state engineerdepartment~~, by an order, shall declare ~~suchthe~~ territory duly organized as an irrigation district under the name and style designated and shall declare the persons receiving the highest number of votes duly elected as directors. The ~~state engineerdepartment~~ shall cause a certified copy of ~~suchthe~~ order, duly certified, to be filed immediately for record in the office of the recorder of each county in which any portion of the irrigation district is situated and also shall file a copy of ~~suchthe~~ order with the county auditor of each ~~such~~ county, and from and after the date of such filing, ~~the organization of such district shall be complete~~county in which any portion of the district is situated. The organization of the district is complete upon the filings required in this section. The ~~state engineerdepartment of water resources~~ immediately shall make out and mail, by registered or certified mail, to each person elected to the office of director a certificate of election signed by the ~~state engineer. The directors thereupon shall enter upon the duties of their office~~director of the department, and the ~~directors shall take office upon receipt of the certification.~~

SECTION 119. AMENDMENT. Section 61-05-19 of the North Dakota Century Code is amended and reenacted as follows:

61-05-19. State engineerDepartment of water resources to file order with secretary of state - Secretary of state to make certificate - Evidence.

The ~~state engineerdepartment of water resources~~ shall file in the office of the secretary of state a certified copy, ~~duly certified by the state engineer, of the state engineer'sdepartment's~~ order declaring any territory to be duly organized as an irrigation district, and the secretary of state shall make and issue to the ~~state engineerdepartment~~ a certificate under the seal of the state, of the due organization of ~~suchthe~~ district and The secretary of state also shall file in the secretary's office a copy of suchthe secretary's certificate and the said order of the state engineerdepartment. SuchThe certificate of the secretary of state, or a copy thereofof the certificate, authenticated by the secretary of state, ~~shall be~~is prima facie evidence of the organization and existence of ~~suchthe~~ irrigation district.

SECTION 120. AMENDMENT. Section 61-05-20 of the North Dakota Century Code is amended and reenacted as follows:

61-05-20. Appeal to district court from orders and decisions of the state engineer department of water resources - Time - Undertaking.

An appeal may be taken to the district court from any order or decision of the ~~state engineer department of water resources~~ by any person who is aggrieved ~~thereby by the order or decision~~, at any time within thirty days after the order or decision appealed from has been filed with the county auditor of the county in which the appeal is taken. ~~Such appeal shall~~ The appeal must be taken by serving notice of appeal on the ~~state engineer director of the department of water resources~~ and by filing the notice of appeal, proof of service ~~thereof the notice~~, and the undertaking required in this section with the clerk of the district court of the county in which the appeal is taken. To effect an appeal an undertaking must be executed by the appellant and sufficient surety conditioned that the appellant will prosecute ~~such the~~ appeal without delay and will pay all costs adjudged against the appellant in the district court. ~~Such the~~ undertaking shall must be made in favor of the ~~state engineer department of water resources~~ as obligee and may be enforced by the ~~state engineer department~~. The appeal ~~shall must~~ be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is situated ~~and if such~~. If the land is situated in more than one county, ~~such the~~ appeal may be taken to the district court of any county in which any part of ~~such the~~ land is situated. Any appeal ~~thus taken shall taken~~ under this section must be docketed in the district court as any civil cause commenced in the district court is docketed ~~and thereupon the~~. The district court has and shall have and exercise original jurisdiction in ~~such cause the~~ the appeal and shall hear and ~~determine the same rule on the case~~, without a jury, in ~~like the same~~ manner as a civil cause originally commenced in that court. The court may require and fix the time for the service and filing of formal pleadings ~~and fix the time therefor~~. Appeals to the supreme court may be taken by the ~~state engineer department of water resources~~ or any other party to the cause from any judgment entered in the district court ~~in any such cause~~, and from any order of ~~said the~~ court if an appeal would lie from ~~such an the~~ order if the ~~same order~~ were entered by the court in any other civil action.

SECTION 121. AMENDMENT. Section 61-06-01 of the North Dakota Century Code is amended and reenacted as follows:

61-06-01. Board of directors of irrigation district - Terms - Vacancies.

If an irrigation district contains less than twenty thousand irrigable acres [8093.72 irrigable hectares] of land and is not divided into precincts or divisions, the board of directors consists of five directors who must be residents of the state and electors of the district and must be elected at large. Two directors elected at the election for the organization of the district serve until the first Tuesday in April following the first regular district election, and three serve until the first Tuesday in April following the second regular election.

If an irrigation district contains twenty thousand irrigable acres [8093.72 irrigable hectares] or more, it must be divided into five or seven divisions or precincts, as the case may be, and one director must be elected from and by the electors of each division or precinct.

If an irrigation district contains twenty thousand irrigable acres [8093.72 irrigable hectares] or more and is divided into five divisions or precincts, the board of directors of the irrigation district consists of five directors. Two directors elected at the election for the organization of the district serve until the first Tuesday in April following the first regular district election, and three directors serve until the first Tuesday in April following the second regular district election.

If an irrigation district contains twenty thousand irrigable acres [8093.72 irrigable hectares] or more and is divided into seven divisions or precincts, the board of directors of the irrigation district consists of seven directors. Three directors elected at the election for the organization of the district serve until the first Tuesday in April following the first regular district election, and four directors serve until the first Tuesday in April following the second regular district election.

The terms of office of the directors elected at the first election for the organization of the district must be determined by lot at their first meeting. Directors elected at subsequent elections serve for four years and until their successors are duly elected and qualified. In case the office of any director becomes vacant, the remaining members of the board shall fill the vacancy by appointment. A director appointed to fill a vacancy serves the unexpired term of the director whose office that director has been appointed to fill. If vacancies occur in the offices of a majority of the directors of an irrigation district, the remaining members and the ~~state engineer~~director of the department of water resources shall fill the vacancies; and if the offices of all the directors become vacant, the ~~state engineer~~director of the department of water resources shall appoint the members of the board ~~and they who shall~~ serve until the next regular election of the district. ~~Their~~The successors ~~in office must then of the appointed directors must~~ be elected to serve the unexpired term of the directors whose offices became vacant. The unexpired term of office that each director ~~thus~~ elected ~~in this manner~~ fills must be determined by lot.

SECTION 122. AMENDMENT. Section 61-06-03 of the North Dakota Century Code is amended and reenacted as follows:

61-06-03. Oath and bond of boards of directors - Filing.

After receiving a certificate of election each director shall take the oath prescribed for civil officers, and shall be bonded in the sum of one thousand dollars. ~~Such~~The oath of office and bond ~~shall~~must be filed in the office of the ~~state engineer~~department of water resources.

SECTION 123. AMENDMENT. Section 61-06-04 of the North Dakota Century Code is amended and reenacted as follows:

61-06-04. Meeting of directors - Organization - Officers - Quorum - Term of officers.

The directors elected at the first election in an irrigation district shall meet at the time and place designated by the ~~state engineer~~department of water resources and shall organize by selecting one of their members as chairman of the board. A temporary secretary ~~shall~~must be designated until a permanent secretary of the board has been appointed. After the organization of the board, a majority of the directors ~~shall constitute~~constitutes a quorum for the transaction of such business ~~as may come before~~ of the board. The board shall appoint ~~and fix the compensation of~~ a secretary, a treasurer, and an assessor of the district and ~~such other officers or employees as the board shall deem~~deems necessary for the efficient conduct of the district's business ~~and shall fix their compensation~~. Officers and employees appointed by the board shall hold office ~~during~~at the pleasure of the board. The office of secretary, assessor, and treasurer may be held by the same person. Each succeeding board of directors shall choose or appoint its officers as ~~herein provided in this section~~.

SECTION 124. AMENDMENT. Section 61-06-05 of the North Dakota Century Code is amended and reenacted as follows:

61-06-05. Official bonds of assessor, district treasurer, and other employees - Approval and filing of bonds.

The assessor ~~shall~~must be bonded in the amount of five hundred dollars, and the district treasurer ~~shall~~must be bonded in an amount not less than double the amount of money that may come into the treasurer's hands, the amount to be determined by the board of directors; but ~~such bond shall not be less than one thousand dollars.~~ Other employees and ~~appointive~~appointed officers ~~shall~~must be bonded in such amounts ~~as prescribed by the board may prescribe.~~ The official bonds of the assessor, treasurer, and other officers and employees ~~shall~~must be approved by the board. ~~Such bonds shall be and filed in the office of the state engineer~~department of water resources.

SECTION 125. AMENDMENT. Section 61-06-19 of the North Dakota Century Code is amended and reenacted as follows:

61-06-19. Secretary of board of directors to declare result of election - Contents.

1. The secretary of the board of directors, as soon as the result of the election is declared, shall enter ~~upon the records of the board a statement of such result which shall show~~record the election results including:
 1. a. The whole number of votes cast in the district.
 2. b. The names of the persons ~~voted for~~who received votes.
 3. c. Each question voted upon.
 4. d. The number of votes cast for each person ~~and the~~.
 - e. The number of votes cast for and against each question ~~voted upon at the election.~~
2. A copy of ~~such~~the statement ~~shall~~of election results must be recorded in a permanent record of the board ~~to be kept for that purpose.~~ ~~Such~~The statement ~~shall~~must be signed by the secretary of the board and authenticated by the seal of the district. A copy of ~~such~~the signed and authenticated statement ~~thus signed and authenticated shall~~must be filed with the county auditor of each county ~~wherein which~~ the irrigation district is situated, and ~~a like copy shall~~another copy must be mailed to the ~~state engineer~~department of water resources.

SECTION 126. AMENDMENT. Section 61-07-08 of the North Dakota Century Code is amended and reenacted as follows:

61-07-08. Surveys, examinations, and plans made to determine cost of construction in district - ~~State engineer~~Department of water resources to prepare report.

~~For the purpose of ascertaining~~To ascertain the cost of any irrigation construction work in a district, the board shall ~~cause~~ such surveys, examinations, and plans to be made as may demonstrate the practicability of the plan and furnish the proper basis for an estimate of the cost of carrying out the plan. All surveys, examinations, maps, plans, and estimates must be made under the direction of a registered professional engineer, who may be ~~the state engineer~~an employee of the department of water

resources, and must be certified by the registered professional engineer. The board shall submit a copy to the ~~state engineer~~ department of water resources, which shall prepare a summary report and file the report with the board. The report must contain such matters as in the judgment of the ~~state engineer~~ department are desirable ~~the matter required by the department~~. Upon receiving the report, the board of directors shall determine the amount of money required to be raised.

SECTION 127. AMENDMENT. Section 61-07-19 of the North Dakota Century Code is amended and reenacted as follows:

61-07-19. Petition for specific orders or changes in canals or other conveyance systems - Methods.

Upon the filing of a petition in the office of the board of any irrigation district, signed by electors who own a majority of the total number of acres [hectares] subject to assessment for construction or other costs; ~~and requesting that rules be adopted by the board~~ adopt rules permitting and providing for any of the following specific orders or changes in the method of operating its canal, pipeline, or other conveyance system, ~~such~~ the board immediately shall provide for the adoption and enforcement of the ~~same~~ rules:

1. That a measuring device of a type approved by the ~~state engineer~~ department of water resources be placed in or near the headgate of any main diverting gate of the main canal, or in any pipeline, or other main conveyance system in order ~~that so the district will keep a continuous record shall be kept by such district of the amount of water received into the canal or pipeline for the use of the lands in~~ such the district.
2. That a measuring device of a type approved by the ~~state engineer~~ department of water resources be placed in the headgates or valves of all main laterals and distributing laterals within the district from and by which water is diverted to tracts or units of twenty acres [8.09 hectares]; or more, for the purpose of determining at all times the amount of water going to or being received upon ~~any and all such~~ the tracts of land, and that it ~~be made the duty of the district to~~ shall keep a separate and correct record of the amount of water delivered through each of ~~such~~ the headgates and valves at all times; and ~~to file the same~~ the record in the office of the board for public inspection.

SECTION 128. AMENDMENT. Section 61-07-27 of the North Dakota Century Code is amended and reenacted as follows:

61-07-27. Conclusion of hearing - Findings - Decree - Costs of hearing - Filing copies of findings.

Upon the conclusion of the hearing provided for in section 61-07-24, the court shall determine the legality and validity of the proceedings had for the issuance of bonds or improvement warrants, the making of any contract, or the levying of any assessments, as the case may be, and shall determine the validity and legality of any other matter properly before the court. The court shall prepare its findings of fact and conclusions of law, and ~~shall~~ any necessary order that the decree of the court be entered in conformity therewith. The court ~~may apportion the costs of the proceeding; in the discretion of the court, may be allowed and apportioned between to the parties thereto.~~ The secretary of the board of directors of the district shall file with the ~~state engineer~~ department of water resources a certified copy of the court's findings of fact, conclusions of law, and order, ~~and decree.~~

SECTION 129. AMENDMENT. Section 61-09-02 of the North Dakota Century Code is amended and reenacted as follows:

61-09-02. District assessor to make list or prepare map to show apportionment of assessments - Filing.

The assessor shall make, or cause to be made, a list showing the apportionment or distribution of assessments, ~~and containing with~~ with a description of each unit or tract of land assessed in the district, and the name of the record owner thereof, ~~or of each unit or tract. Alternatively,~~ the assessor may prepare a map on a convenient scale showing each unit or tract of land with the amount per acre [.40 hectare] apportioned ~~thereto to the unit or tract. Such~~ Where practicable, the units of land shall, ~~wherever practicable, must~~ must consist of governmental subdivisions of forty acres [16.19 hectares] or more. If all lands on ~~such~~ the statement or map are assessed at the same amount or rate per acre [.40 hectare], a general statement to that effect ~~shall be~~ is sufficient. A copy of ~~such~~ the list or map ~~shall~~ must be filed in the office of the county auditor of each county in which the district is situated, ~~one copy shall be filed in the office of the state engineer, and one copy shall remain and another copy must be filed in the department of water resources. One copy must remain~~ in the office of the board for public inspection.

SECTION 130. AMENDMENT. Section 61-10-27 of the North Dakota Century Code is amended and reenacted as follows:

61-10-27. Board may include lands in district.

If the board of directors deems it ~~not for the best interest of the district that a change in its district boundaries be made so as to include any of the lands mentioned in the petition, or any part thereof, it is not in the best interests of the district, the board~~ shall reject the petition. If it deems it for the board deems the change is in the best interest of the district, the board shall grant the petition in whole or in part and by resolution direct the chairman and the secretary of the board to issue its an order, including all or any part of the lands mentioned in the petition in the district, unless electors who together own at least ten percent of the whole number of acres [hectares] in the district subject to assessment for irrigation costs object in writing at or before the time of hearing to the inclusion of such the lands. When lands are included in a district, the order of the board of directors allowing inclusion shall must be filed with the ~~state engineer~~ department of water resources and with the county auditor of each county in which ~~such the~~ the lands are situated and ~~shall. The order also must~~ be filed and recorded in the office of the recorder of each such county.

SECTION 131. AMENDMENT. Section 61-10-30 of the North Dakota Century Code is amended and reenacted as follows:

61-10-30. Result of election - Duty of the board and secretary.

If a majority of the votes cast at the election ~~shall be~~ are against the inclusion of the land described in the resolution of the board of directors, the board shall deny the petition and ~~shall may not~~ shall not proceed no further in the matter. If, ~~however,~~ a majority of the votes cast at the election ~~shall be~~ are in favor of including ~~such the~~ the lands in the district, the board shall issue its order setting forth the filing of the petition, the action of the board ~~thereon on the petition, and~~ on the petition, and the result of the election, and shall order ~~such the~~ the lands added to the district. The order ~~shall must~~ must describe the lands to be included in the district. A certified copy of the order of the board ~~shall must~~ must be filed with the ~~state engineer~~ department of water resources and the county auditor of each county in which the included lands lie. A certified copy of ~~such the~~ the order ~~shall also must~~ must be filed and recorded in the office of the recorder in each such county.

SECTION 132. AMENDMENT. Section 61-10-35 of the North Dakota Century Code is amended and reenacted as follows:

61-10-35. Outstanding bonds or improvement warrants or contractual obligations - Order excluding lands - Assent.

If the holders of outstanding bonds or improvement warrants, or of contracts obligating the district, consent in writing to exclusion of lands mentioned in the petition, the board of directors may by resolution direct the chairman and the secretary of the board to execute ~~its~~the board's order excluding ~~such~~the lands from the district. The assent in writing of holders of district bonds or improvement warrants, or of anyone interested in a contract obligating the district, ~~shall~~must be filed with the secretary of the district and ~~shall be~~ copied in the minutes of the board, and ~~such~~the minutes or a certified copy ~~thereof shall be~~of the minutes are admissible in evidence with the same effect as the written assent. If ~~such~~ assent is not given, the board shall deny and dismiss the petition. When lands are excluded from the district, a certified copy of the order of the board ~~shall~~must be filed in the ~~offices of the state engineer~~department of water resources and the county auditor of each county in which the excluded lands are situated and filed and recorded in the office of the recorder of each ~~such county~~of those counties.

SECTION 133. AMENDMENT. Section 61-10-37 of the North Dakota Century Code is amended and reenacted as follows:

61-10-37. Result of election - Order excluding lands.

If at an election for exclusion of lands from an irrigation district, a majority of the votes cast ~~shall be~~are against exclusion, the board shall dismiss the petition and ~~may not proceed no further in the matter, but if~~. If a majority of ~~such~~the votes ~~shall be~~are in favor of excluding ~~such~~the lands from the district, the board shall issue its order setting forth the filing of the petition, the action of the board ~~thereon~~on the petition, and the result of the election, and shall order ~~such~~the lands excluded from the district. A certified copy of ~~such~~the order ~~shall~~must be filed in the ~~offices of the state engineer~~department of water resources and the county auditor of each county in which the excluded lands lie and ~~shall~~must be filed and recorded in the office of the recorder of each such county.

SECTION 134. AMENDMENT. Section 61-11-04 of the North Dakota Century Code is amended and reenacted as follows:

61-11-04. Conduct of election - Canvassing and reporting result of election.

An election on the question of dissolution in all respects ~~shall~~must be conducted, and the votes ~~therefrom~~ canvassed, in the same manner as provided for a regular election of the district. A certified copy of the statement of the election result by the district's board of directors and all ballots, lists, tally sheets, and other documents pertaining to the election ~~shall~~must be forwarded to the ~~state engineer~~department of water resources by registered or certified mail or express.

SECTION 135. AMENDMENT. Section 61-11-08 of the North Dakota Century Code is amended and reenacted as follows:

61-11-08. Sale of district property authorized - Appraisers appointed - Oath - Compensation.

If a majority of the votes cast at an election for dissolution of a district favor dissolution and sale, the irrigation works, franchises, and other property of the district

may be sold at not less than a valuation to be determined by a board of three appraisers. One member of ~~such~~the board of appraisers ~~shall~~must be appointed by the board of directors of the district, one ~~shall~~must be appointed by the ~~state engineer~~director of the department of water resources, and the two ~~appointed~~ appraisers ~~thus selected~~ shall choose the third appraiser. The board of appraisers ~~shall~~must be sworn by an officer who is authorized to administer oaths and who has an official seal. ~~Such~~The board shall appraise the irrigation works, franchises, and all other property of the district at ~~its~~their cash value, and ~~to determine such value~~, with the consent of the board of directors of the district, may employ engineers, accountants, and ~~such~~other expert assistance as ~~may be necessary~~. The ~~board of directors shall fix the~~ compensation of ~~such~~the appraisers, engineers, accountants, and others shall be fixed by the board of directors.

SECTION 136. AMENDMENT. Section 61-11-09 of the North Dakota Century Code is amended and reenacted as follows:

61-11-09. Appraisal of property by appraisers - Report to board - Advertising property for sale - Opening of bids.

The board of appraisers shall appraise all of the property of the district and shall make a report of ~~its appraisal~~the appraisal to the board of directors. A copy of ~~such~~the report shall ~~must~~ be filed by the secretary of the district with the ~~state engineer~~department of water resources. The board of directors shall advertise for sale all of the property of the district and shall publish a notice once each week for two consecutive weeks specifying that sealed bids will be received, opened, and considered by the board at the time and place specified in ~~such~~the notice, and ~~setting forth a description of~~describing the property. At the time and place designated in ~~such~~the notice, or as soon ~~thereafter~~after the time as the board can meet, ~~it~~the board shall open and consider all bids received for the purchase of the property, and ~~it~~the board may reject ~~any and all~~ bids which do not, in the judgment of the board, offer a fair and just consideration.

SECTION 137. AMENDMENT. Section 61-11-15 of the North Dakota Century Code is amended and reenacted as follows:

61-11-15. Report of dissolution when - Where filed - Contents - Recording of in office of recorder.

After all the property of an irrigation district ~~shall have been~~is disposed of upon dissolution and all the obligations ~~thereof shall have been~~of the district are paid, the directors of ~~such~~the district shall file in the office of the county auditor of each county in which ~~such~~the district is situated, and in the office of the ~~state engineer~~department of water resources, a report signed by the chairman of the board and attested by the secretary, and bearing the seal of the district, stating ~~that the district has disposed of its property and franchises, that all of the obligations of the district have been paid fully paid, and that the district has been disorganized and dissolved.~~ ~~Such~~The report shall ~~must~~ be recorded in the miscellaneous records of the recorder in each of the counties in which the district is located, and from and after ~~such~~the filing and recording, ~~such~~the irrigation district shall ~~be~~is deemed to be dissolved.

SECTION 138. AMENDMENT. Section 61-12-46 of the North Dakota Century Code is amended and reenacted as follows:

61-12-46. ~~State engineer~~Department of water resources to assist county board of flood irrigation.

The ~~state engineer department~~ of water resources, upon the request of the board of flood irrigation of any county in this state, shall assist ~~said~~ the board in determining whether or not the construction of any proposed dams, gates, and necessary ditches and canals for the purpose of controlling, regulating, and forcing the overflow of water in non-navigable rivers or streams within this state would be conducive to the public health, convenience, or welfare.

SECTION 139. AMENDMENT. Section 61-14-01 of the North Dakota Century Code is amended and reenacted as follows:

61-14-01. Units of measurement.

The standard of measurement for the flow and volume of water shall be established by rule by the ~~state engineer department of water resources~~.

SECTION 140. AMENDMENT. Section 61-14-03 of the North Dakota Century Code is amended and reenacted as follows:

61-14-03. Amount of water for irrigation.

~~In the issuance of~~When issuing a permit to appropriate water for irrigation or in the adjudication of ~~adjudicating~~ the rights to the use of water for such purpose, the amount of water allowed by the state engineer shall not be in excess of ~~use water for irrigation, the department of water resources may not allow more than~~ two acre-feet [2466.96 cubic meters] of water per acre [.40 hectare] per year, or the equivalent thereof, ~~to be delivered on the land, except that during periods of sufficient water supply the state engineer department may allow up to three acre-feet per acre [3700.45 cubic meters per .40 hectare] per irrigation season to be delivered on the land for a specified period of time,~~ in accordance with the method of irrigation being used, the type of soil to which the water is to be applied, and other criteria established by the state engineer, ~~may increase the amount of water allowed to three acre-feet per acre [3700.45 cubic meters per .40 hectare], per irrigation season, for a specified period of time which in no event shall be of greater duration than the period of sufficient water supply. Notwithstanding any other provision of this section, the state engineer may not allow more of an amount of water than can be beneficially used department. The department may not allow more water to be delivered on the land than can be used beneficially.~~

SECTION 141. AMENDMENT. Section 61-14-06 of the North Dakota Century Code is amended and reenacted as follows:

61-14-06. Measuring devices - Unlawful to take water without using.

Every ditch owner shall construct and maintain a substantial headgate at the point where the water is diverted and shall construct a measuring device, of a design approved by the ~~state engineer department of water resources~~, at the most practicable point or points for measuring and apportioning the water as determined by the ~~state engineer department~~. The ~~state engineer department~~ may order the construction of ~~such~~the measuring device by the ditch owner, and if construction is not completed within twenty days ~~thereafter~~after receipt of the order, the person in charge of the irrigation works, upon instructions from the ~~state engineer department~~, shall refuse to deliver water to ~~such~~the ditch owner. The ~~taking of water by such ditch owner may not take water from the irrigation works~~ until the ~~construction of such~~measuring device and the approval thereof by the state engineer ~~shall be unlawful~~is constructed and the department approves the device. ~~Such~~Measuring devices shall be ~~so must be arranged that~~so they can be locked in place, and when locked by the person in charge of the irrigation works or that person's authorized agent, for the measurement

or apportionment of water, ~~it shall be unlawful to other persons may not interfere with, disturb, or change the same, and the devices. The use of water through such a measuring device after having been that was interfered with, disturbed, or changed shall be constitutes prima facie evidence of the guilt of the person benefited by such the interference, disturbance, or change violated this section.~~

SECTION 142. AMENDMENT. Section 61-14-07 of the North Dakota Century Code is amended and reenacted as follows:

61-14-07. Unlawful interference with rights to use of water - Penalty.

Any person interfering with or injuring or destroying any headgate, weir, benchmark, well, or other appliance or works for the appropriation, diversion, storage, apportionment, or measurement of water, or for any hydrographic or hydrologic surveys, ~~or who shall interfere interfering with any person engaged in the discharge of duties connected therewith with a headgate, weir, benchmark, well, or other appliance or works for those purposes, shall be is guilty of a class A misdemeanor; and also shall be liable for the injury or damage resulting from such the unlawful act. The state engineer department of water resources and the person in charge of an irrigation work, and their authorized assistants and agents, may enter upon private property for the performance of their respective duties, but shall do no unnecessary injury thereto may not damage the property unnecessarily.~~

SECTION 143. AMENDMENT. Section 61-14-13 of the North Dakota Century Code is amended and reenacted as follows:

61-14-13. Seepage water.

~~In the case of seepage water from any constructed works, any party desiring to use the same shall make application to the state engineer, as in the case of unappropriated water, and such party shall~~ A person wishing to use seepage water from a constructed works shall apply to the department of water resources for the use in the same manner as applying for a permit to use unappropriated water and shall pay to the owner of such the works a reasonable charge for the storage or carriage of such the water in such the works, if the appearance of such the seepage water can be traced beyond reasonable doubt to the storage or carriage of water in such the works. The state engineer shall department of water resources may not issue a permit to appropriate such the seepage waters until any agreement for the payment of such charges shall have been entered into by the said parties reasonable charges required by this section is executed.

SECTION 144. AMENDMENT. Section 61-15-03 of the North Dakota Century Code is amended and reenacted as follows:

61-15-03. Water and wildlife conservation projects - Supervision.

The authority, control, and supervision of all water and wildlife conservation projects and wildlife reservations ~~shall be is vested in the state engineer department of water resources. The state engineer department may accept cooperation, aid, and assistance from the United States of America, its instrumentalities or agencies, in the construction, maintenance, and operation of any structure for the purposes set forth in this chapter, and may do any act necessary to make such aid, assistance, and cooperation from the federal government available, and shall have the right to. The department may grant such easements to the United States of America, its instrumentalities or agencies, as may be required.~~

SECTION 145. AMENDMENT. Section 61-15-09 of the North Dakota Century Code is amended and reenacted as follows:

61-15-09. Conservation of lakes and streams of Turtle Mountain region.

~~The state engineer of this state~~department of water resources shall take ~~such any necessary~~ action ~~as may be necessary~~ to conserve the water levels and rehabilitate the streams and brooks in the Turtle Mountain region of North Dakota lying in Bottineau and Rolette Counties, ~~and shall do any act necessary to bring about such rehabilitation of streams, lakes, and brooks.~~

SECTION 146. AMENDMENT. Section 61-16-06.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16-06.1. Consolidation of water resource districts.

1. Any two or more water resource districts may be consolidated into a single district, or existing districts may be adjusted to reflect watershed boundaries, as determined by the ~~state engineer~~department of water resources, by filing with the state water commission a petition signed by:
 - a. ~~A~~ a majority of the members of the board of each of the districts; or
 - b. ~~Fifty~~ fifty percent or more of the landowners within each of the districts.

When the petition is filed by the district boards, it must be accompanied by a certified copy of the resolution of the governing boards authorizing the signing of the petition. The petition must contain a detailed plan for the disposition of the property, assets, and liabilities of each of the districts. This plan must be as equitable as practicable to every landowner within the districts and must fully protect creditors and the holders of improvement warrants of the petitioning districts. The plan may provide for a continuance of assessments upon properties in the petitioning districts to retire outstanding obligations, or for the assumption of outstanding obligations and the spreading of assessments for the payment ~~thereof of the outstanding obligations~~ over properties in the newly created district. ~~No petition may be approved by the~~The state water commission may not approve the petition unless it~~the~~ petition fully meets the requirements of this section.

2. The state water commission shall fix a time and place for a public hearing on a petition filed under this section at a site convenient and accessible for a majority of the affected individuals. At least fifteen days prior to the date of hearing, the commission shall publish notice of the hearing in at least one newspaper of general circulation in each of the districts being consolidated or adjusted. Additional notice of the hearing may be given in a manner prescribed by the state water commission.
3. Prior to the hearing, the ~~state engineer~~department of water resources shall make, or cause to be made, an investigation of the need for consolidation of the petitioning districts and shall submit a report of the findings to the state water commission. This report must be presented at the petition hearing. If the state water commission finds it is not feasible, desirable, or practical to consolidate the petitioning districts, ~~it~~the commission shall deny the petition and state the reasons for denial. ~~If, however,~~ the state water commission finds that problems of flood control, watershed development or improvement, drainage, water supply, or other reasons make consolidation or boundary

adjustment and establishment of the proposed water resource district desirable, ~~if the commission~~ shall grant the petition and create the district. Upon creation of the new water resource district, the state water commission shall dissolve the included districts or make necessary boundary adjustments to existing districts.

SECTION 147. AMENDMENT. Subsection 1 of section 61-16.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A water resource board may undertake the snagging, clearing, and maintaining of natural watercourses and the debris removal of bridges and low-water crossings. The board may finance the project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises benefited by the project. The benefits of a project must be determined in the manner provided in section 61-16.1-17. Revenue from an assessment under this section may not be used for construction of a drain or reconstruction or maintenance of an existing assessment drain. Any question as to whether the board is maintaining a natural watercourse or is constructing a drain or reconstructing or maintaining an existing assessment drain must be ~~determined~~resolved by the ~~state engineer~~department of water resources. All provisions of this chapter apply to assessments levied under this section except:
 - a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on agricultural lands and may not exceed fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property; and
 - b. If the assessment is for a project costing less than one hundred thousand dollars, no action is required for the establishment of the assessment district or the assessments except the board must approve the project and assessment by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy the assessments to be made by a vote of two-thirds of its members.
 - (1) If a board that undertakes a project finds that the project will benefit lands outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located together with the report prepared under section 61-16.1-17.
 - (2) The board of each water resource district containing lands benefited by a project must approve the project and assessment by a vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by a project must approve and levy the assessment to be made by a vote of two-thirds of its members.
 - (3) If a project and assessment is not approved by all affected water resource boards and county commission boards, the board of each water resource district and the board of county commissioners of each county shall meet to ensure that all common water management problems are resolved pursuant to section 61-16.1-10. In addition, the water resource board that undertakes the project may proceed with the project if the board finances the cost of the project and does not assess land outside the boundaries of the district.

- c. All revenue from an assessment under this section must be exhausted before a subsequent assessment covering any portion of lands subject to a prior assessment may be levied.

SECTION 148. AMENDMENT. Section 61-16.1-23 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-23. Appeal to state engineer~~department of water resources~~.

After the hearing provided for in section 61-16.1-22, affected landowners and any political subdivision subject to assessment, having not less than twenty percent of the possible votes, as determined by section 61-16.1-20, who believe that the assessment ~~had not been~~was not made fairly or equitably made, ~~or that~~or the project is not properly located or designed properly, may appeal to the ~~state engineer~~department of water resources by petition, within ten days after the hearing on assessments, to make a review of the assessments and to examine the location and design of the proposed project. Upon receipt of ~~such~~the petition the ~~state engineer~~department shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments ~~have not been~~were not made equitably, the ~~state engineer~~department may proceed to correct the ~~same~~assessments, and the ~~state engineer's~~department's correction and adjustment of ~~said~~the assessment is final. Should it appear that, in the judgment of the ~~state engineer~~, if the department believes the project has been ~~improperly~~was located or designed improperly, the ~~state engineer~~department may order a relocation and redesign. ~~Such relocation and redesign that~~ must be followed in the construction of the proposed project. Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the ~~state engineer~~department in the matter, any landowner or political subdivision ~~who or which claims that~~claiming the landowner or political subdivision will receive no benefit at all from the construction of a new project may appeal that issue to the ~~state engineer~~department within ten days after the hearing on assessments, ~~the question of whether there is any benefit. The state engineer may not determine the specific amount of benefit upon~~Upon an appeal by an individual landowner or political subdivision, ~~but shall only~~the department may determine ~~if whether~~whether there is any benefit to the landowner or political subdivision, ~~and the but not the specific amount of benefit. The determination of the state engineer upon such question~~department regarding whether there is a benefit is final.

SECTION 149. AMENDMENT. Section 61-16.1-37 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-37. Commission, state engineer~~department of water resources~~, and water resource board shall encourage both structural and nonstructural alternatives.

The commission, ~~state engineer~~department of water resources, and the appropriate water resource board shall encourage both structural and nonstructural solutions to water management problems within the district by federal and state agencies, private individuals, ~~public and private corporations, and limited liability companies and other persons~~, and shall lend their aid, counsel, and assistance to any ~~such~~facilitate appropriate solutions. All structural alternatives, including dams, dikes, drains, and other works, whether constructed by public authorities or private persons, ~~unless specifically exempted therefrom, shall be~~are subject to all the provisions of this chapter unless specifically exempted.

SECTION 150. AMENDMENT. Section 61-16.1-38 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty - Emergency.

No dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or storage of water which are capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, may be constructed within any district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam, or other device, along with complete plans and specifications, must be presented first to the state-engineerdepartment of water resources. Except for low-hazard dams less than ten feet [3.05 meters] in height or agricultural dikes less than two feet [0.61 meters] in height, the plans and specifications must be completed by a professional engineer registered in this state. After receipt, the state-engineerdepartment shall consider the application in such detail as the state-engineerdepartment deems necessary and proper. The state-engineerdepartment shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which would interfere with the orderly control of the water resources of the district, or may order such changes, conditions, or modifications as in the judgment of the state-engineerdepartment may be necessary for safety or the protection of property. Within forty-five days after receipt of the application, except in unique or complex situations, the state-engineerdepartment shall complete the state-engineer's initial review of the application and forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board thereupon shall consider; the application within forty-five days, the application, and suggest any changes, conditions, or modifications to the state-engineerdepartment. If the board approves the application meets with the board's approval, the board shall forward the approved application to the state-engineerdepartment. If the board fails to respond within forty-five days, it shall be determined the board has will be deemed to have no changes, conditions, or modifications to make. The state-engineerdepartment shall make the final decision on the application and forward that decision to the applicant and the local water resource board. The state-engineerdepartment may issue temporary permits for dikes, dams, or other devices in cases of an emergency. Any person constructing a dam, dike, or other device, which is capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, without first securing a permit to do so, as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

SECTION 151. AMENDMENT. Section 61-16.1-39 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-39. Dams or other devices constructed within a district shall come under control of a water resource board.

All dams, dikes, and other water conservation and flood control works or devices constructed within any district, unless specifically exempted therefrom, shall, without affecting the commission's or the state engineer's authority relative to such works, automatically come, are under the jurisdiction of the water resource board for the district within which the dam, dike, works, or device exists or is to be constructed. The district's jurisdiction over the dam, dike, works, or device does not affect the commission's or department's authority relative to the dam, dike, works, or device. No changes or modification of any existing dams, dikes, or other works or devices shall may be made without complying fully with the provisions of this chapter.

SECTION 152. AMENDMENT. Section 61-16.1-53.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-53.1. Appeal of board decisions - ~~State engineer~~Department of water resources review - Closing of noncomplying dams, dikes, or other devices for water conservation, flood control, regulation, and watershed improvement.

1. The board shall make the decision required by section 61-16.1-53 within a reasonable time, not exceeding one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. Any aggrieved party may appeal the board's decision to the ~~state engineer~~department of water resources. The appeal to the ~~state engineer~~department must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the ~~state engineer~~department which must state specifically ~~set forth~~ the reason why the board's decision is erroneous. The appealing party ~~shall~~ shall submit copies of the written appeal notice to the board and to all nonappealing parties. Upon receipt of this notice the board, if it has ordered removal of a dam, dike, or other device, is relieved of its obligation to procure the removal of the dam, dike, or other device. The ~~state engineer~~department shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The ~~state engineer~~department may enter property affected by the complaint to investigate the complaint.
2. If the board fails to investigate and make a determination concerning the complaint within a reasonable time, not exceeding one hundred twenty days, the person filing the complaint may file the complaint with the ~~state engineer~~department of water resources within one hundred fifty days of the submittal date of the original complaint. ~~The state engineer shall, without~~Without reference to chapter 28-32, the department shall cause the investigation and determination to be made, either by action against the board or by conducting the investigation and making the determination.
3. If the ~~state engineer~~department of water resources determines that a dam, dike, or other device has been constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the ~~state engineer~~department shall take one of these three actions:
 - a. Notify the landowner by certified mail at the landowner's post-office address of record;
 - b. Return the matter to the jurisdiction of the board along with the investigation report; or
 - c. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.
4. If the ~~state engineer~~department of water resources decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and state that if the dam, dike, or other device is not removed within a reasonable time as determined by the ~~state engineer~~department, but not less than thirty days, the ~~state engineer~~department shall procure the removal of the dam, dike, or other device and assess the cost of removal against the responsible landowner's property. The notice from the ~~state engineer~~department also must state that, within fifteen days of the date the

notice is mailed, the affected landowner may demand, in writing, a hearing on the matter. Upon receipt of the demand, the ~~state engineer~~department shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the ~~state engineer~~department, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the ~~state engineer~~department shall certify the assessment to the county auditor of the county where the noncomplying dam, dike, or other device is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other property taxes are collected and paid. Assessments collected must be deposited with the state treasurer and credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the ~~state engineer~~department under this section may appeal the decision of the ~~state engineer~~department to the district court under chapter 28-32. A hearing by the ~~state engineer~~department as provided for in this section is a prerequisite to an appeal.

5. If the ~~state engineer~~department of water resources, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and it must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the ~~state engineer's~~department's decision under the terms of this section.
6. If the ~~state engineer~~department of water resources, after completing the investigation required under this section, decides to forward the dam, dike, or other device complaint to the state's attorney, a complete copy of the investigation report must also be forwarded, ~~which~~ and must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint under the statutory responsibilities prescribed in chapter 11-16.
7. In addition to the penalty imposed by the court on conviction under this statute, the court shall order the dam, dike, or other device removed within a reasonable time period as the court determines, but not less than thirty days. If the dam, dike, or other device is not removed within the time prescribed by the court, the court shall procure the removal of the dam, dike, or other device, and assess the cost against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

SECTION 153. AMENDMENT. Section 61-16.2-01 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-01. Legislative intent and purpose.

The legislative assembly finds and declares that a large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state. The legislative assembly further finds that public interest necessitates that the floodplains of this

state be developed in a manner which will alleviate loss of life and threat to health, and reduce private and public economic loss caused by flooding.

It is ~~therefore~~ the policy of this state and the purpose of this chapter to guide development of the floodplains of this state in accordance with the enumerated legislative findings, to reduce flood damages through sound floodplain management, stressing nonstructural measures such as floodplain zoning and floodproofing, acquisition and relocation, and flood warning practices; and to ensure as far as practicable that the channels and those portions of the floodplains of watercourses which are the floodways are not inhabited and are kept free and clear of interference or obstructions which may cause any undue restriction of the capacity of the floodways.

It is also the policy of this state and purpose of this chapter to provide state coordination and assistance to communities in floodplain management activities, to encourage communities to adopt, administer, and enforce sound floodplain management ordinances, and to provide the ~~state engineer with~~ department of water resources the authority necessary to carry out and enforce a floodplain management program for the state and to coordinate federal, state, and local floodplain management activities in this state.

SECTION 154. AMENDMENT. Section 61-16.2-02 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-02. Definitions.

1. In this chapter, unless the context or subject matter otherwise provides:
4. a. "Commission" means state water commission.
2. b. "Community" means any political subdivision that has the authority to zone.
3. c. "Conveyance" or "hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.
4. d. "Department" means the department of water resources.
- e. "District" means a water resource district, as defined in chapter 61-16.1.
5. f. "Flood fringe" means that portion of a floodplain outside of the floodway.
6. g. "Floodway" or "regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot [30.48 centimeters].
7. h. "Person" means any person, firm, partnership, association, corporation, limited liability company, agency, or any other private or governmental organization, which includes any agency of the United States, a state agency, or any political subdivision of the state.
8. ~~"State engineer" means the state engineer appointed pursuant to section 61-03-01, who is also the chief executive officer of the commission, or, for the purpose of this chapter, the state engineer's designee.~~

2. For the purposes of this chapter, the ~~state engineer~~department shall, ~~in addition to the definitions listed above,~~ follow the definitions in this section and the definitions under the national flood insurance program [42 U.S.C. 4001 et seq.] and implementing regulations, ~~which are hereby incorporated into and made a part of this chapter by reference.~~

SECTION 155. AMENDMENT. Section 61-16.2-03 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-03. Duties of ~~state engineer~~the department.

The ~~state engineer~~department shall:

1. Collect and distribute information relating to flooding and floodplain management.
2. Coordinate local, state, and federal floodplain management activities to the greatest extent possible, and encourage appropriate federal agencies to make their flood control planning data available to communities and districts for planning purposes, in order to allow adequate local participation in the planning process and in the selection of desirable alternatives.
3. Assist communities and districts in their floodplain management activities within the limits of available appropriations and personnel in cooperation with the division of homeland security.
4. Do all other things, within lawful authority, which are necessary or desirable to manage the floodplains for uses compatible with the preservation of the capacity of the floodplain to carry and discharge the base flood. In cooperation with communities and districts, the ~~state engineer~~department shall conduct, whenever possible, periodic inspections to determine the effectiveness of local floodplain management programs, including an evaluation of the enforcement of and compliance with local floodplain management ordinances.

SECTION 156. AMENDMENT. Section 61-16.2-04 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-04. Delineation of floodplains and floodways.

The ~~state engineer~~department shall assist communities in preparing and obtaining data and other necessary information for the delineation of floodplains and floodways. When the ~~state engineer~~department determines that sufficient technical information is available for the delineation of floodplains and floodways on a watercourse or lake, the ~~state engineer shall then~~department shall consult with the appropriate district and each affected community. The ~~state engineer~~department, the affected community, and the appropriate district shall consider flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and ~~such~~ other data as the district and community may consider appropriate. Upon obtaining and developing the necessary information for delineation of the floodplain and floodway, the ~~state engineer~~department and the affected community shall notify the appropriate federal agency and request that ~~such material~~the information be used to delineate the floodplain and floodway under the national flood insurance program [42 U.S.C. 4001 et seq.]. The regulatory floodway must be able to carry the waters of the base flood without cumulatively increasing the water surface elevation of the base flood more than one foot [30.48 centimeters] at any point.

SECTION 157. AMENDMENT. Section 61-16.2-05 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-05. Floodplain management ordinances.

1. Each community shall submit the floodplain management ordinances adopted under the national flood insurance program [42 U.S.C. 4001 et seq.] to the state engineer department for review.
2. If the state engineer department determines that there is a failure by a community to comply with the intent, purposes, and provisions of this chapter and the minimum ordinances adopted under the national flood insurance program [42 U.S.C. 4001 et seq.], the state engineer department shall notify the appropriate federal agency and the community of those findings. The state engineer shall also department also shall notify the community of the state and federal penalties for such noncompliance and shall work with the community until such time as the state engineer department determines that the community will comply or is complying.

SECTION 158. AMENDMENT. Subsection 1 of section 61-16.2-09 of the North Dakota Century Code is amended and reenacted as follows:

1. It is unlawful for any person to establish any use ~~which is not in accordance with that does not comply with~~ this chapter within any floodplain without prior written approval of the affected community. Every use placed in the floodplain in violation of this chapter or a floodplain management ordinance adopted under or in compliance with the provisions of this chapter, or adopted under the national flood insurance program [42 U.S.C. 4001 et seq.], is a public nuisance, and the construction or installation ~~thereof the use~~ may be enjoined by an action brought by the state engineer department or the appropriate community. The state engineer department or community may obtain a court order directing the removal or elimination of ~~such the~~ public nuisance, or authorizing the state engineer department or community to remove the public nuisance, or cause the public nuisance to be removed, at the expense of the owner. A person who violates any of the provisions of this chapter is guilty of a class B misdemeanor.

SECTION 159. AMENDMENT. Section 61-16.2-11 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-11. Authority to enter and investigate lands or waters.

The state engineer department or any community must notify all landowners prior to making any entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by this chapter. An investigation of a nonconforming use or existing construction or structure ~~shall must~~ be made by the state engineer department either on the state engineer's department's own initiative, on the written request of an owner of land abutting the watercourse involved, or on the written request of a community.

SECTION 160. AMENDMENT. Section 61-16.2-13 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-13. Flood insurance.

Communities that have residential and nonresidential structures in areas subject to excessive flooding, as determined by the state engineer department, shall

participate in the national flood insurance program [Pub. L. 90-448] and Acts amendatory thereof or supplementary thereto, so that the people of North Dakota may have the opportunity to indemnify themselves from future flood losses through the purchase of this insurance administered by the federal emergency management agency. A community is not required to participate in the program if all of the land under the jurisdiction of the community is enrolled as a result of another community's participation in the program.

SECTION 161. AMENDMENT. Section 61-16.2-14 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-14. State engineer Department review of development in regulatory floodways - Exceptions.

Before issuing a permit or authorization to allow a use in a regulatory floodway, the community responsible for permitting or authorizing such the use shall notify the state engineer department of the proposed use. The state engineer department shall determine whether a functioning hydraulic model is needed to measure the effect of the proposed use. Upon the request of the state engineer department, the community shall submit to the state engineer department for review all technical documentation, including a functioning hydraulic model and other technical information needed for the state engineer's department's review to analyze the proposed use and to identify its proposed impact. The state engineer department shall complete the state engineer's review within thirty days after receiving the technical documentation. Upon completion of the state engineer's review, the state engineer department shall notify the community whether the proposed use is in compliance with state and federal law. A community may apply to the state engineer department for an exemption on a case-by-case basis from this section. The state engineer department may grant the exemption if the state engineer department determines that the community, by using its own technical review, can determine if whether the proposed use is in compliance with state and federal law.

SECTION 162. AMENDMENT. Section 61-20-02 of the North Dakota Century Code is amended and reenacted as follows:

61-20-02. Drilling artesian or flowing well - Requirements.

Every person, stock company, association, corporation, or limited liability company that shall drill an artesian or flowing well shall comply with the rules of the state engineer department of water resources regarding such activity.

SECTION 163. AMENDMENT. Section 61-20-03 of the North Dakota Century Code is amended and reenacted as follows:

61-20-03. Wild wells.

The provisions of this chapter shall apply to a wild well, or a well out of control, except that if it is determined by the state engineer that such department of water resources the well cannot be repaired for use, no valve shall may be attached, but every effort shall must be made by the owner to seal, plug, or cut off the same well. Old wells which that might be damaged by so doing need not be shut off, but such wells shall must be put in repair at the earliest possible date and shall must be regulated thereafter after the repair.

SECTION 164. AMENDMENT. Section 61-20-06 of the North Dakota Century Code is amended and reenacted as follows:

61-20-06. Duties of ~~state engineer~~the department of water resources.

The ~~state engineer~~department of water resources shall advise the citizens of the state as to the practicability of measures affecting the underground waters of this state. ~~The state engineer shall by:~~

1. ~~Counsel and consult with the owner and assist~~Counseling, consulting, and assisting the owner to work out the most desirable control and use of the owner's well.
2. ~~Select~~Selecting at least three representative flowing wells in each county having that number, and as many more as ~~it~~the department may deem advisable.
3. ~~Cause~~Causing the record of ~~their~~the wells' flows and pressures to be taken, from time to time, to learn as much as possible of the decline, fluctuations, and permanence of the artesian supply.
4. ~~Plan and conduct such~~Planning and conducting other investigations as ~~it~~the department may find advisable to ascertain the best method of prolonging the utility of the same.
5. ~~Keep~~Keeping a record of the location, size, depth, flow, size of flow, character of water, construction, and history of all artesian wells of the state, and ~~keep~~keeping the record on file for public reference.
6. ~~Secure~~Securing the enforcement of all laws pertaining to artesian and phreatic waters of the state.
7. ~~Publish from time to time, as it may deem advantageous,~~Publishing bulletins containing information concerning the artesian wells and phreatic waters of the state as often as the department deems advantageous.

The state engineer may make such

8. Making any additional, reasonable rules and regulations governing such artesian wells as it shall determine as the department determines are necessary.

SECTION 165. AMENDMENT. Section 61-20-07 of the North Dakota Century Code is amended and reenacted as follows:

61-20-07. Enforcement of chapter ~~by state engineer~~ - Appeal.

The provisions of this chapter must be enforced by the ~~state engineer~~department of water resources. The ~~state engineer~~department may issue administrative orders requiring compliance with this chapter. An appeal from the ~~engineer's~~department's ruling of the department may be taken under the provisions of chapter 28-32.

SECTION 166. AMENDMENT. Section 61-21-02.1 of the North Dakota Century Code is amended and reenacted as follows:

61-21-02.1. Assessment drain culverts.

As part of the design and construction of a proposed assessment drain or the maintenance or reconstruction of an existing assessment drain, the board, upon approval of the appropriate road authority, may locate, relocate, size, and install

culverts through roads which are not on the routes of assessment drains but which are within the assessment area and which are necessary for surface water to reach the assessment drain. The design and installation of culverts under this section must be consistent with chapters 24-03 and 24-06 and the streamcrossing and construction site protection standards prepared by the department of transportation and the state engineerdepartment of water resources.

SECTION 167. AMENDMENT. Section 61-21-22 of the North Dakota Century Code is amended and reenacted as follows:

61-21-22. Hearing on assessment - Appeal to state engineer - Correction of assessments - Relocating drain - Fees of state engineer.

At the hearing provided for in section 61-21-21, the board shall proceed to hear all complaints relative to the percentage assessments and shall correct or confirm the same. Should landowners subject to assessment or whose property is subject to condemnation for the construction of the proposed drain having a majority of the possible votes, as determined by section 61-21-16, believe that the assessment had not been fairly or equitably made, or that the drain is not properly located or designed, they may appeal to the state engineerdepartment of water resources by petition within ten days after the hearing on assessments, to ~~make a review of such~~the percentage assessments and to examine the location and design of the proposed drain. Upon the receipt of ~~such~~the petition, the state engineerdepartment shall proceed to examine the lands assessed and the location and design of the proposed drain, and should it appear to the ~~state engineer~~that ~~such~~the department determine the assessments have not been made equitably, the state engineerdepartment may proceed to correct the ~~same~~assessments, and the state engineer's department's correction and adjustment of said assessments shall ~~be~~are final. Should it appear that, in the judgment of the ~~state engineer~~the department determine the drain has been improperly located or designed, the state engineerdepartment may order a relocation and redesign. ~~Such~~The relocation and redesign shallmust be followed in the construction of the proposed drain. For the state engineer's department's services in ~~making such review of~~reviewing the assessments and examination ofexamining the location and design, the state engineer shall be alloweddepartment is entitled to ten dollars per day and actual and necessary expenses during the time the state engineerdepartment is engaged upon ~~such~~the work. All moneys received by the state engineer shalldepartment must be paid into the state treasury and credited to the general fund. After the hearing provided in this section, the board shall make a finding that the benefits to all tracts of land will exceed the costs that will be assessed against the lands. Any landowner who ~~may claim that~~claims the landowner will receive no benefit at all from the construction of a new drain may appeal the question of whether there is any benefit to the state engineerdepartment upon the filing of a bond in the sum of two hundred fifty dollars with the board for the payment of the costs of the state engineerdepartment in the matter. The state engineer shalldepartment may not determine the specific amount of benefits upon an appeal by an individual landowner, but shall only determine ~~if only whether~~there is any benefit to the landowner, and the determination of the state engineer upon such question shall bedepartment is final.

SECTION 168. AMENDMENT. Section 61-21-34 of the North Dakota Century Code is amended and reenacted as follows:

61-21-34. Procedure to construct or extend a drain through or into two or more counties.

In order to construct or extend a drain through or into two or more counties in this state, a petition shallmust be presented to the several boards for the establishment of

~~such the~~ drain in their several counties as provided in this chapter. The boards of ~~such several the~~ counties shall hold a joint meeting and shall determine the necessity or expediency of the establishment of ~~such the~~ drain. The several boards of all counties through or into which ~~such the~~ proposed drain may run shall agree upon the proportion of damages and benefits to accrue to the lands affected in each county, and for this purpose ~~they the boards~~ shall consider the entire course of ~~said the~~ drain through all ~~said the~~ counties as one drain. Should the boards fail to agree upon the benefits to accrue to the lands in each county, ~~they the boards~~ shall submit the points in controversy to the ~~state engineer of the state water commission~~ department of water resources, and the ~~state engineer's decision thereon shall be~~ department's decision is final. ~~They The boards~~ may apportion the cost of establishing and constructing ~~such the~~ entire drain ratably and equitably upon the lands in each ~~such~~ county in proportion to the benefits to accrue to ~~such the~~ county's lands. When ~~they the boards~~ have so apportioned the same, ~~they costs, the boards~~ shall make written reports of ~~such the~~ apportionment to the auditors of the several counties affected, ~~which. The reports shall~~ must show the portion of cost of ~~such the~~ entire drain to be paid by taxes upon the lands in each of ~~such the~~ counties and ~~such reports shall~~ must be signed by the boards of all counties affected. Upon the filing of ~~such the~~ reports, the several boards shall meet and assess against the lands in each of ~~such the~~ counties, ratably and equitably as provided by this chapter, an amount sufficient to pay the proportion of the cost of ~~such the~~ drain in each of ~~such counties so fixed by all said boards~~ county. The provisions of this chapter relating to drains within a single county shall govern the establishment, construction, maintenance, repair, and cleanout of ~~such the~~ drains.

SECTION 169. AMENDMENT. Section 61-24-07 of the North Dakota Century Code is amended and reenacted as follows:

61-24-07. Attorney general shall act as legal adviser - ~~Chief engineer of state water commission~~ Department of water resources to assist board - Employment of counsel and engineers.

The attorney general shall, ~~as far as the attorney general's duties permit,~~ act as the legal adviser of the board to the extent the duties of the attorney general permit. ~~The chief engineer of the state water commission~~ department of water resources shall furnish such engineering services and assistance ~~as to the extent~~ the duties of the ~~chief engineer's office~~ department permit. When the district has funds available, the board of directors may employ other counsel to advise and represent ~~it the board~~ in ~~its the board's~~ proceedings and affairs, and may employ other engineers and engineering services in connection with ~~its the board's~~ work and the affairs of the district.

SECTION 170. AMENDMENT. Section 61-24.3-01 of the North Dakota Century Code is amended and reenacted as follows:

61-24.3-01. Legislative findings and intent.

The legislative assembly finds that adequate water supplies for municipal, domestic, livestock, rural, irrigation, industrial, and other uses are essential for the social stability and economic security of the people of the state of North Dakota. It is further found that the development and utilization of the water resources of this state are necessary for the protection of health, property, and enterprise, and for the promotion of prosperity and general welfare of the people of the state of North Dakota, and that such development and utilization of water resources in this state involves, ~~necessitates,~~ and requires the exercise of the sovereign powers of the state and concern a public purpose. ~~Therefore, it is hereby declared~~ It is necessary that the

southwest pipeline project, as authorized and approved pursuant to this chapter, be established and constructed, to provide for the supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River with water supplies from the Missouri River for multiple purposes, including domestic, rural, and municipal uses. In furtherance of this public purpose, the state water commission may provide for the issuance of bonds not to exceed twenty-five million dollars in accordance with chapter 61-02 to finance the cost of the project. The provisions of this chapter may not be construed to, ~~in any manner,~~ abrogate or limit the rights, powers, duties, or functions of the state water commission or the ~~state engineer department of water resources,~~ but are supplementary thereto ~~to the rights, powers, duties, or functions.~~ Nor may this chapter be construed as limiting or ~~in any way~~ affecting the laws of this state relating to the organization or operation of irrigation districts, water resource districts, or other political subdivisions.

SECTION 171. AMENDMENT. Section 61-24.5-01 of the North Dakota Century Code is amended and reenacted as follows:

61-24.5-01. Findings and declaration of policy.

It is hereby found and declared by the legislative assembly that many

1. ~~Many~~ areas and localities in southwestern North Dakota do not enjoy adequate quantities of high-quality drinking water. ~~It is also found and declared that other~~ Other areas and localities in southwestern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply. ~~It is further found and declared that supplementation~~ Supplementation of the water resources of southwestern North Dakota, with water supplies from Lake Sakakawea and the Missouri River, utilizing a pipeline transmission and delivery system, is a feasible approach to provide southwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water.

~~It is further declared that opportunity~~

2. Opportunity for greater economic security, protection of health, property, enterprise, preservation of the benefits from the land and water resources of this state, and the promotion of the prosperity and general welfare of all of the people of North Dakota depends on the effective development and utilization of the land and water resources of this state, and ~~necessitate and require~~ the exercise of the sovereign powers of the state and concern a public purpose. ~~Therefore, in order to~~ To accomplish this public purpose, ~~it is hereby declared necessary that a project to supply and distribute water to southwestern North Dakota, as authorized by chapter 61-24.3, and acts amendatory thereof and supplementary thereto, must be established and constructed, to:~~
4. a. Provide for the supply and distribution of water to the people of southwestern North Dakota through a pipeline transmission and delivery system for purposes including domestic, rural water, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, rural water, and municipal uses.
2. b. Provide for the future economic welfare and property of the people of this state, and particularly the people of southwestern North Dakota, by making available waters from Lake Sakakawea and the Missouri River for beneficial and public uses.

3. ~~It is also declared necessary to study and further develop water resources to provide adequate water supplies for energy, industrial, agriculture, and other opportunities in southwest North Dakota. The provisions hereof~~This section may not be construed to abrogate or limit the rights, powers, duties, and functions of the state water commission or the state engineerdepartment of water resources, but must be considered supplementary thereto to those rights, powers, duties, and functions.

SECTION 172. AMENDMENT. Section 61-24.5-18 of the North Dakota Century Code is amended and reenacted as follows:

61-24.5-18. Easement granted for ditches, canals, tramways, and transmission lines on any public lands.

In connection with the construction and development of the southwest pipeline project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the southwest pipeline project, provided, however, ~~that the director of the department of transportation and the state engineerdirector of the department of water resources must approve the plans of the authority with respect to~~regarding the use of any and all right of way of roads prior to suchbefore the grant becomingis effective.

SECTION 173. AMENDMENT. Section 61-24.6-01 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-01. Findings and declaration of policy.

~~It is hereby found and declared by the legislative assembly that manyMany areas and localities in northwestern North Dakota do not enjoy safe drinking water, and that the water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances. It is also found and declared that otherOther areas and localities in northwestern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply. It is further found and declared that supplementationSupplementation of the water resources of northwestern North Dakota with water supplies from the Missouri River, utilizing a pipeline transmission and delivery system, may be the only alternative to provide northwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water.~~

~~It is further declared that effectiveEffective development and utilization of the land and water resources of this state; the opportunity for greater economic security; the protection of health, property, enterprise, and the preservation of the benefits from the land and water resources of this state; and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order toTo accomplish this public purpose, it is hereby declared necessary that a project be pursued that wouldto supply and distribute water to the people of northwestern North Dakota through a pipeline transmission and delivery system for purposes, including domestic, rural water districts, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, rural water district, and municipal uses must be pursued. In furtherance of this public purpose, the state water commission may provide for the issuance of bonds in accordance with chapter 61-02 to finance the costs of the project.~~

~~The provisions of this~~ This chapter may not be construed to abrogate or limit the rights, powers, duties, and functions of the state water commission or the ~~state engineer~~ department of water resources, but must be considered supplementary to those rights, powers, duties, and functions.

³³⁸ **SECTION 174. AMENDMENT.** Section 61-24.6-02 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-02. Northwest area water supply advisory committee - Created.

The northwest area water supply advisory committee consists of the following representatives, appointed by the ~~state engineer~~ director of the department of water resources:

1. One person from the city of Minot recommended by the Minot city council.
2. One person from the city of Williston recommended by the Williston city council.
3. One person from the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County water resource districts recommended jointly by the governing boards of the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County water resource districts.
4. One representative of the state water commission recommended by the commission.
5. One representative of the Three Affiliated Tribes, representing that area of the Fort Berthold Indian Reservation north of the Missouri River and Lake Sakakawea recommended by the tribal council.
6. One representative of rural water distribution systems located in northwestern North Dakota. This representative must be a resident of Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County.
7. One representative of a municipality other than the city of Minot, located in Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County.
8. One representative of the Garrison Diversion Conservancy District recommended by the board of directors of the conservancy district.
9. One at-large representative.

³³⁹ **SECTION 175. AMENDMENT.** Section 61-24.6-03 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-03. Advisory committee - Officers - Meetings - Compensation.

³³⁸ Section 61-24.6-02 was also amended by section 1 of House Bill No. 1063, chapter 493.

³³⁹ Section 61-24.6-03 was also amended by section 2 of House Bill No. 1063, chapter 493.

The northwest area water supply advisory committee shall elect a chairman and vice chairman. The advisory committee shall meet at the times and places necessary to carry out the purposes of this chapter. The advisory committee members may be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09. The advisory committee members serve at the pleasure of the state engineer~~director of the department of water resources~~. Vacancies must be filled in the same manner as original appointments are made.

SECTION 176. AMENDMENT. Section 61-24.6-05 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-05. ~~State engineer~~Department of water resources - Employment of staff.

The ~~state engineer~~director of the department of water resources may employ full-time and other personnel ~~and may employ such other personnel as areas necessary for the administration of to administer~~ this chapter and as available funds permit. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund or appropriated for purposes of administering this chapter may be used for salaries and expenses of persons employed pursuant to this chapter.

SECTION 177. AMENDMENT. Section 61-24.8-01 of the North Dakota Century Code is amended and reenacted as follows:

61-24.8-01. Definitions.

As used in this chapter:

1. "Auditor" means the county auditor.
2. "Board" means the board of directors of the Garrison Diversion Conservancy District.
3. "Bond" means any revenue bond, refunding bond, improvement bond, or other evidence of indebtedness, including indebtedness owed to banks, or other public or private lending sources, of the district issued under this chapter.
4. "Direct benefit" means water is delivered to a tract of land.
5. "Director" means a member of the board of directors.
6. "District" means the Garrison Diversion Conservancy District.
7. "Federal agency" includes the United States, the president of the United States, or any agency, instrumentality, or corporation of the United States which has been or may be designated or created by or pursuant to any act or acts or joint resolutions of the Congress of the United States or which may be owned or controlled, directly or indirectly, by the United States.
8. "Holder of bonds" or "bondholder", or any similar term, means any person who is the registered owner of any outstanding revenue bond, improvement bond, or refunding bond.
9. "Law" means any statute of this state.
10. "Project" means any work, undertaking, enterprise, or any combination of two or more projects, which the district is authorized to construct. The term

includes all irrigation improvements, betterments, extensions, and replacements of work, undertaking, or enterprises, and all appurtenances, facilities, easements, lands, rights in land, water rights, contract rights, approaches, dams, reservoirs, generating stations, trunk connections, other water mains, filtration works, pumping stations, equipment, franchises, and structures in connection with or incidental to any irrigation work, undertaking, or enterprise the district is authorized to construct.

11. "Refinancing" means funding, refunding, paying, or discharging by means of refunding bonds or the proceeds from the sale of refunding bonds, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improvement of a project.
12. "Refunding bonds" means notes, bonds, certificates, or other obligations of the district issued under this chapter, the proceeds of which are to be used to pay the principal of or interest on any outstanding bonds or other obligations.
13. "Revenues" means all fees, tolls, rates, rentals, and charges levied and collected by the district in connection with, and all other income and receipts of whatever kind or character derived by the district from, the operation of any project.
14. "State engineer" has the same meaning as provided in chapter 61-03.
15. "Warrant" means an order drawn by the proper official of the district on its treasury, the warrant to be so drawn that when signed by the district treasurer in an appropriate place it becomes a check on the depository of the district, and a warrant upon the treasury may not be delivered or mailed to the payee or the payee's agent or representative until the warrant has been signed by the district treasurer and entered on the district's books as a check drawn on a bank depository.

SECTION 178. AMENDMENT. Section 61-24.8-18 of the North Dakota Century Code is amended and reenacted as follows:

61-24.8-18. Appeal to state engineer department of water resources.

Within ten days after the hearing under section 61-24.8-17, affected landowners subject to assessment, who believe that the assessment has not been fairly or equitably made, or that the project is not properly located or designed, may petition the state engineer department of water resources to review the assessments and examine the location and design of the proposed project. Upon receipt of a petition, the state engineer department shall examine the lands assessed and the location and design of the proposed project. If it appears to the state engineer that department the assessments have not been made equitably, the state engineer department may proceed to correct the assessments. The state engineer's department's correction and adjustment of assessments is final. If it appears to the state engineer that department the project has been improperly located or designed, the state engineer department may order a relocation and redesign, which must be followed in the construction of the proposed project. Any landowner claiming to receive no direct benefit from the project may appeal to the state engineer department the question of whether there is any direct benefit. The appeal must be filed with the state engineer department within ten days after the hearing on assessments in section 61-24.8-17. The state engineer department may not determine the specific amount of benefit upon an appeal by an individual landowner and may determine only if there is any direct benefit to the

landowner. The determination of the ~~state engineer~~department upon the appeal is final.

SECTION 179. AMENDMENT. Section 61-29-04 of the North Dakota Century Code is amended and reenacted as follows:

61-29-04. Administration.

This chapter must be administered by a Little Missouri River commission composed of the director of the parks and recreation department, the director of the department of environmental quality, the ~~chief engineer of the state water commission~~director of the department of water resources, or their designated representatives, and one member from each of the following counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission members representing the above-mentioned counties must be appointed by their respective boards of county commissioners and shall serve without compensation except that each appointing board of county commissioners may reimburse its county representative for actual and necessary mileage to and from meetings of the commission at the same rate as state officers. The county representatives appointed must be resident landowners who live adjacent to the Little Missouri River with the exception of the Golden Valley County representative. A county representative unable to attend a meeting of the commission may be represented by a person who has a written proxy from the representative authorizing that person to act and vote for the representative. The proxy must be a resident landowner of the county that the proxy is representing, but need not live adjacent to the Little Missouri River. The county members shall serve terms of office as follows: two members shall serve one-year terms, two members shall serve two-year terms, and two members shall serve three-year terms.

SECTION 180. AMENDMENT. Subsection 6 of section 61-31-02 of the North Dakota Century Code is amended and reenacted as follows:

6. "State assessment team" means representatives from the department of agriculture, the game and fish department, the ~~state engineer's staff~~department of water resources, the United States department of agriculture's soil conservation service, and the United States fish and wildlife service.

SECTION 181. AMENDMENT. Section 61-32-03 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03. Permit to drain waters required - Penalty.

Any person, before draining a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application must be submitted to the ~~state engineer~~department of water resources. The ~~state engineer~~department shall refer the application to the water resource district or districts within which is found a majority of the watershed or drainage area of the pond, slough, lake, or sheetwater for consideration and approval, but the ~~state engineer~~department may require that applications proposing drainage of statewide or interdistrict significance be returned to the ~~state engineer~~department for final approval. A permit may not be granted until an investigation discloses that the quantity of water which will be drained from the pond, slough, lake, or sheetwater, or any series thereof ~~those water bodies~~, will not flood or adversely affect downstream lands. If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream landowners, the

water resource board may not issue a permit until flowage easements are obtained. The flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. This section does not apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency, as determined by the ~~state engineer~~department of water resources.

Any person draining, or causing to be drained, a pond, slough, lake, or sheetwater, or any series ~~thereof~~ those water bodies, which has a watershed area comprising eighty acres [32.37 hectares] or more, without first securing a permit to do so, as provided by this section, is liable for all damage sustained by any person caused by the draining, and is guilty of an infraction. As used in this section, sheetwater means shallow water that floods land not normally subject to standing water. The ~~state engineer~~department of water resources may adopt rules for temporary permits for emergency drainage.

³⁴⁰ **SECTION 182. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1. a. Installation of a subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
- b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
- c. Installation of a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area does not require a permit.
2. a. The ~~state engineer~~department of water resources shall develop an application form for a permit required under this section. A person seeking to construct a subsurface water management system that requires a permit under this section must submit a completed application to the water resource district board within which is found a majority of the land area for consideration and approval. The water resource district board may charge permit applicants a fee up to one hundred fifty dollars. Water resource districts shall forward copies of all approved permits to the ~~state engineer~~department of water resources.
- b. Upon submission of a completed application for a permit, the water resource district board immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management

³⁴⁰ Section 61-32-03.1 was also amended by section 2 of House Bill No. 1437, chapter 490.

system outlet unless the distance to the nearest waterway depicted as a perennial or intermittent stream or river on a United States geological survey topography map, assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.

3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the completed permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the completed application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the completed permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.
- b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.
- c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right of way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.
- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control

structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.

- e. A water resource district board may not deny a completed permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream of the system's outlet. The board shall include a written explanation of the reasons for a denial of a completed application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the completed application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
4. A denial of a completed permit application by a water resource district board may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a completed permit application denied by a water resource district board or the state-engineerdepartment of water resources if the application meets the requirements of this section.
 5. A water resource district board may not be held liable to any person for issuing a permit under this section.
 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.
 7. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is guilty of an infraction.

SECTION 183. AMENDMENT. Section 61-32-08 of the North Dakota Century Code is amended and reenacted as follows:

61-32-08. Appeal of board decisions - State-engineerDepartment of water resources review - Closing of noncomplying drains.

1. The board shall make the decision required by section 61-32-07 within a reasonable time, but not to exceed one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. Any aggrieved party may appeal the board's decision to the state-engineerdepartment of water resources. The appeal to the state-engineerdepartment must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state-engineerdepartment, which and the notice must specifically set forthspecify the reason why the board's decision is

erroneous. The appealing party also shall also submit copies of the written appeal notice to the board and to all nonappealing parties. Upon receipt of this notice the board, if it has ordered closure of a drain, lateral drain, or ditch, is relieved of its obligation to procure the closing or filling of the drain, lateral drain, or ditch. The ~~state engineer~~department shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The ~~state engineer~~department may enter property affected by the complaint to investigate the complaint.

2. If the board fails to investigate and make a determination concerning the complaint within a reasonable time, but not to exceed one hundred twenty days, the person filing the complaint may file the complaint with the ~~state engineer~~department of water resources within one hundred fifty days of the submittal date of the original complaint. The ~~state engineer~~department, without reference to chapter 28-32, shall cause the investigation and determination to be made, either by action against the board or by conducting the investigation and making the determination.
3. If the ~~state engineer~~department of water resources determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the ~~state engineer~~department shall take one of three actions:
 - a. Notify the landowner by certified mail at the landowner's post-office address of record;
 - b. Return the matter to the jurisdiction of the board along with the investigation report; or
 - c. Forward the drainage complaint and investigation report to the state's attorney.
4. If the ~~state engineer~~department of water resources decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and state that if the drain, lateral drain, or ditch is not closed or filled within a reasonable time as determined by the ~~state engineer~~department, but not less than thirty days, the ~~state engineer~~department shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost, against the responsible landowner's property. The notice from the ~~state engineer~~department must state that the affected landowner may demand in writing, within fifteen days of the date the notice is mailed, ~~demand in writing~~ a hearing on the matter. Upon receipt of the demand, the ~~state engineer~~department shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the ~~state engineer~~department, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the ~~state engineer~~department shall certify the assessment to the county auditor of the county where the noncomplying drain, lateral drain, or ditch is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other property taxes are collected and paid. Assessments collected must be deposited with the state treasurer and credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the ~~state engineer~~department under the provisions of this section may appeal the decision of the ~~state engineer~~department to the

district court under chapter 28-32. A hearing by the ~~state engineer as provided for in department under~~ this section is a prerequisite to an appeal.

5. If the ~~state engineer~~department of water resources, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and it must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the ~~state engineer's department's~~ decision under ~~the terms of~~ this section.
6. If the ~~state engineer~~department of water resources, after completing the investigation required under this section, decides to forward the drainage complaint to the state's attorney, a complete copy of the investigation report must also be forwarded, ~~which and~~ must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint under the statutory responsibilities prescribed in chapter 11-16.
7. In addition to the penalty imposed by the court on conviction under this statute, the court shall order the drain, lateral drain, or ditch closed or filled within a reasonable time period as the court determines, but not less than thirty days. If the drain, lateral drain, or ditch is not closed or filled within the time prescribed by the court, the court shall procure the closing or filling of the drain, lateral drain, or ditch, and assess the cost against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

SECTION 184. AMENDMENT. Section 61-33-01 of the North Dakota Century Code is amended and reenacted as follows:

61-33-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.
2. "Board of university and school lands" means that entity created by section 15-01-01.
3. "Navigable waters" means waters that were in fact navigable at the time of statehood, and that are used, were used, or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water.
4. "Ordinary high water mark" means that line below which the presence and action of the water upon the land is continuous enough so as to prevent the growth of terrestrial vegetation, destroy its value for agricultural purposes by preventing the growth of what may be termed an ordinary agricultural crop, including hay, or restrict its growth to predominantly aquatic species.
5. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands.

6. "State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.

SECTION 185. AMENDMENT. Section 61-33-01.1 of the North Dakota Century Code is amended and reenacted as follows:

61-33-01.1. Ordinary high water mark determination - Factors to be considered.

The ~~state engineer~~department of water resources shall maintain ordinary high water mark delineation guidelines consistent with this section.

1. When determining the ordinary high water mark for delineating the boundary of sovereign lands, vegetation and soils analysis must be considered the primary physical indicators. When considering vegetation, the ordinary high water mark is the line below which the presence and action of the water is frequent enough to prevent the growth of terrestrial vegetation or restrict vegetation growth to predominately aquatic species. Generally, land, including hay land, where the high and continuous presence of water has destroyed the value of the land for agricultural purposes must be deemed within the ordinary high water mark.
2. When feasible, direct hydrological and hydraulic measurements from stream gauge data, elevation data, historic records of water flow, high resolution light detection and ranging systems, prior elevation and survey maps, and statistical hydrological evidence must be considered when determining the ordinary high water mark. The ~~state engineer~~department of water resources shall establish appropriate guidelines, technical standards, and other criteria, including use of light detection and ranging systems or other future technological advancements, as necessary, for conducting hydrologic and hydraulic modeling required by this section.
3. Secondary physical indicators, including litter, debris, or staining, may be considered to supplement the analysis of the ordinary high water mark investigation but may not supersede primary physical indicators unless primary physical indicators are deemed inadequate or inconclusive. Physical indicators directly affected by influent non-navigable tributaries, adjoining water bodies, or wetlands may not be used to delineate the sovereign land boundary of a navigable body of water.

SECTION 186. AMENDMENT. Section 61-33-02 of the North Dakota Century Code is amended and reenacted as follows:

61-33-02. Administration of sovereign lands.

All sovereign lands of the state must be administered by the ~~state engineer~~department of water resources and the board of university and school lands subject to the provisions of this chapter. Lands managed pursuant to this chapter are not subject to leasing provisions found elsewhere in this code.

SECTION 187. AMENDMENT. Section 61-33-03 of the North Dakota Century Code is amended and reenacted as follows:

61-33-03. Transfer of possessory interests in real property.

All possessory interests now owned or that may be acquired except oil, gas, and related hydrocarbons, in the sovereign lands of the state owned or controlled by the

state or any of its officers, departments, or the Bank of North Dakota, together with any future increments, are transferred to the state of North Dakota, acting by and through the ~~state engineer~~director of the department of water resources. All such possessory interests in oil, gas, and related hydrocarbons in the sovereign lands of the state are transferred to the state of North Dakota, acting by and through the board of university and school lands. These transfers are self-executing. No evidence other than the provisions of this chapter is required to establish the fact of transfer of title to the state of North Dakota, acting by and through the ~~state engineer~~director of the department of water resources and board of university and school lands. Proper and sufficient delivery of all title documents is conclusively presumed.

SECTION 188. AMENDMENT. Section 61-33-05 of the North Dakota Century Code is amended and reenacted as follows:

61-33-05. Duties and powers of the ~~state engineer~~department of water resources.

The ~~state engineer~~department of water resources shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding ~~such~~the property; may enforce all rights of the owner in its own name; may issue and enforce administrative orders and recover the cost of the enforcement from the party against which enforcement is sought; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to ~~such~~the assets, whether ~~such~~the agreements were made heretofore, or are made hereafter~~before or after this section was enacted~~. The ~~state engineer~~department of water resources may enter agreements with the game and fish department or other law enforcement entities to enforce this chapter and rules adopted under this chapter.

SECTION 189. AMENDMENT. Section 61-33-05.1 of the North Dakota Century Code is amended and reenacted as follows:

61-33-05.1. Navigability determinations.

1. Before making a determination that a body of water or portion of a body of water is navigable, the ~~state engineer~~department of water resources shall:
 - a. Develop and deliver to the state water commission a preliminary finding regarding the navigability of the body of water or portion of a body of water and the legal rationale for the preliminary finding; and
 - b. Consult with the state water commission in an open meeting and demonstrate the public need and purpose for the determination to be made.
2. After completing the requirements of subsection 1, the ~~state engineer~~department of water resources may proceed with making a final determination of navigability by:
 - a. Providing reasonable public notice of the preliminary finding, legal rationale for the preliminary finding, and opportunity for the public to provide comments for no less than sixty days. The notice must:
 - (1) Include the address and electronic mail address to which public comments may be sent and the deadline by which public comments must be received;

- (2) Clearly identify the specific body of water or portion of a body of water for which the finding of navigability is sought;
 - (3) State the ~~state engineer~~department will hold a public hearing regarding the preliminary finding before a final determination of navigability is made, and provide the date, time, and location of the public hearing;
 - (4) Be provided to the governing body of each soil conservation district, water resource district, and county adjacent to the body of water or portion of a body of water for which the preliminary finding was made;
 - (5) Be published in the official county newspaper for each county adjacent to the body of water or portion of a body of water for which the preliminary finding was made; and
 - (6) Briefly state the purpose of the hearing and describe the impact or effect a determination of navigability will have on the property rights of persons who own property adjacent to the body of water or portion of a body of water for which the determination of navigability may be made; and
- b. Holding a public hearing regarding the preliminary finding.
3. After completing the requirements of subsection 2 and making a determination of navigability, the ~~state engineer~~department of water resources shall prepare a report regarding the determination, including summaries of the information provided to the state water commission, the public hearings held, and the public comments received. The ~~state engineer~~department shall provide the report to the state water commission, send the report by certified mail to any person that appeared at the public hearing required under subsection 2 or provided written comments by the deadline, make the report available to the public, including on the website for the office of the secretary of state, and provide public notice of the report's availability. The report is final on the date it is provided to the state water commission.
 4. A determination of navigability may be appealed directly to a court of competent jurisdiction in accordance with sections 28-32-42 through 28-32-46 and sections 28-32-50 and 28-32-51.

SECTION 190. AMENDMENT. Section 61-33-07 of the North Dakota Century Code is amended and reenacted as follows:

61-33-07. Deposit of income.

All income derived from the lease and management of the lands acquired by the ~~state engineer~~department of water resources and board of university and school lands pursuant to this chapter and not belonging to other trust funds must be deposited in the strategic investment and improvements fund.

SECTION 191. AMENDMENT. Section 61-33-08 of the North Dakota Century Code is amended and reenacted as follows:

61-33-08. Advisory board - Responsibilities.

There is created a sovereign lands advisory board. The board's responsibility is to advise the ~~state engineer~~department of water resources and the board of university

and school lands on general policies as well as specific projects, programs, and uses regarding sovereign lands. The board, being solely advisory, has no authority to require the ~~state-engineer~~department of water resources or the board of university and school lands to implement or otherwise accept the board's recommendations.

SECTION 192. AMENDMENT. Section 61-33-09 of the North Dakota Century Code is amended and reenacted as follows:

61-33-09. Members of the board - Organization - Meetings.

1. The board consists of the manager of the Garrison Diversion Conservancy District, the ~~state-engineer~~director of the department of water resources, the commissioner of university and school lands, the director of the parks and recreation department, the director of the game and fish department, and the director of the department of environmental quality, or their representatives.
2. The ~~state-engineer~~director of the department of water resources is the board's secretary.
3. The board shall meet at least once a year or at the call of the ~~state-engineer~~director of the department of water resources or two or more members of the board. The board shall meet at the office of the ~~state-engineer~~director of the department of water resources or at any other place decided upon by the board.
4. The board may adopt rules to govern its activities.

SECTION 193. AMENDMENT. Section 61-33-10 of the North Dakota Century Code is amended and reenacted as follows:

61-33-10. Penalty.

A person who violates this chapter or any rule implementing this chapter is guilty of a class B misdemeanor unless a lesser penalty is indicated. A civil penalty may be imposed by a court in a civil proceeding or by the ~~state-engineer~~department of water resources through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter. The ~~state-engineer~~department of water resources may bring a civil action to recover damages resulting from violations and may also recover any costs incurred.

SECTION 194. AMENDMENT. Section 61-33.1-07 of the North Dakota Century Code is amended and reenacted as follows:

61-33.1-07. ~~State-engineer~~Department of water resources regulatory jurisdiction. (Retroactive application - [See note](#))

This chapter does not affect the authority of the ~~state-engineer~~department of water resources to regulate the historical Missouri riverbed channel, minerals other than oil and gas, or the waters of the state, provided the regulation does not affect ownership of oil and gas minerals in and under the riverbed or lands above the ordinary high water mark of the historical Missouri riverbed channel subject to inundation by Pick-Sloan Missouri basin project dams.

SECTION 195. AMENDMENT. Section 61-34-01 of the North Dakota Century Code is amended and reenacted as follows:

61-34-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Commission" means the state water commission.
2. "Program" means the drought disaster livestock water assistance program.
3. ~~"State engineer" means the state engineer appointed under section 61-03-01.~~

SECTION 196. AMENDMENT. Section 61-34-04 of the North Dakota Century Code is amended and reenacted as follows:

61-34-04. Eligibility - Application for assistance.

Applicants with livestock water supply problems caused by drought may apply for assistance from the program. An applicant must first apply for water cost-share assistance from the United States department of agriculture farm service agency. If cost-share assistance is denied by the agency, the applicant may forward the application to the commission for consideration. An application forwarded to the commission must include a document from the United States department of agriculture farm service agency stating the reason for denial of cost-share assistance. ~~The state engineer department of water resources~~ shall review all applications received by the commission. Notwithstanding any other provision of law, a water supply project commenced after application for funding is made but without prior approval of the ~~state engineer department~~ is eligible for funding consideration from the program. ~~The state engineer department~~ shall provide funds for approved applications in accordance with rules and criteria for eligibility and only to the extent that funding is available. A drought disaster livestock water assistance program project located on Indian land is eligible for the program.

SECTION 197. AMENDMENT. Section 61-35-01 of the North Dakota Century Code is amended and reenacted as follows:

61-35-01. Definitions.

As used in this chapter:

1. "Auditor" means the county auditor.
2. "Benefit unit" means the fee each member pays, for each service that is planned to be connected to the water system, for the privilege of using the district's facilities.
3. "Board" means the board of directors of a district.
4. "Bond" means any revenue bond, refunding bond, or improvement bond, or other evidence of indebtedness of a district issued under this chapter.
5. "Director" means a member of the board of directors.
6. "District" means a water district organized under this chapter.
7. "Federal agency" includes the United States, the president of the United States, or any agency, instrumentality, or corporation of the United States which has been or may be designated or created by or pursuant to any act or

acts or joint resolutions of the Congress of the United States or which may be owned or controlled, directly or indirectly, by the United States.

8. "Holder of bonds" or "bondholder", or any similar term, means any person who is the registered owner of any outstanding revenue bond, improvement bond, or refunding bonds.
9. "Law" means any statute of this state.
10. "Member" means an owner of real property that is located within a district, the tenant of the real property, or another person acting for the owner with the owner's written consent.
11. "Participating member" means a member who has subscribed to and paid the established fee for at least one benefit unit in a district, in the manner provided by this chapter.
12. "Project" means any work, undertaking, enterprise, or any combination of two or more projects which a district is authorized to construct and from which the district has derived or may derive revenues. "Project" includes all improvements, betterments, extensions, and replacements of work, undertaking, or enterprises, and all appurtenances, facilities, easements, lands, rights in land, water rights, contract rights, approaches, dams, reservoirs, generating stations, sewage disposal plants, intercepting sewers, trunk connections, other sewer and water mains, filtration works, pumping stations, equipment, franchises, and structures in connection with or incidental to any work, undertaking, or enterprise a district is authorized to construct.
13. "Refinancing" means funding, refunding, paying, or discharging, by means of refunding bonds or the proceeds from the sale of refunding bonds, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improvement of a project and payable solely from all or any part of the revenue or interest on the revenue of the project in arrears or about to become due whether or not such interest is represented by interest certificates.
14. "Refunding bonds" means notes, bonds, certificates, or other obligations of a district issued under this chapter, the proceeds of which are to be used to pay the principal of or interest on any outstanding bonds or other obligations.
15. "Revenues" means all fees, tolls, rates, rentals, and charges levied and collected by a district in connection with, and all other income and receipts of whatever kind or character derived by a district from, the operation of any project.
16. "State engineer" has the same meaning as provided in chapter 61-03.
17. "Warrant" means an order drawn by the proper official of a district on its treasury, the warrant of order to be so drawn that when signed by the district treasurer in an appropriate place it becomes a check on the depository of such district, and a warrant upon the treasury may not be delivered or mailed to the payee or the payee's agent or representative until the warrant has been signed by the district treasurer and entered on the district's books as a check drawn on a bank depository.

SECTION 198. AMENDMENT. Section 61-35-02 of the North Dakota Century Code is amended and reenacted as follows:

61-35-02. Petition.

A petition may at any time be filed with the ~~state engineer~~department of water resources requesting the ~~state engineer~~department to organize a district encompassing an area in one county or in two or more adjacent counties for the purpose of providing an adequate supply of water for the residents of the area. An area to be included in a district may not include property then included in any other district or included in the service area of a nonprofit corporation or cooperative association established under title 10 to operate a rural water system, except as otherwise permitted under section 61-35-25.

SECTION 199. AMENDMENT. Section 61-35-02.1 of the North Dakota Century Code is amended and reenacted as follows:

61-35-02.1. Conversion of water resource district water supply system to water district.

A water resource district that has developed a water supply system under chapter 61-16.1 may convert that system to a water district as provided in this section. The water resource district board operating a water supply system may petition the ~~state engineer~~department of water resources to organize a district in the manner provided by section 61-35-02. The signatures of the water resource district's board of directors on the petition and a resolution adopted by the water supply system's users approving the petition suffice in lieu of signatures of owners of fifty percent of the real property in the proposed district, if the petition presenter provides evidence satisfactory to the ~~state engineer~~department that a sufficient number of members of the proposed district will subscribe or have subscribed to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition is as provided by this chapter. In any district organized upon the petition of a water resource board of directors, the following procedures apply:

1. After final approval of the petition by the ~~state engineer~~department of water resources, the secretary of the water resource board shall file a notice with the secretary of state.
2. Upon filing of the notice, the assets and liabilities of the water supply system become the assets and liabilities of the newly organized district without any further meetings, voting, notice to creditors, or other actions by the members of the board.
3. The officers and board of directors of the water resource district are the officers and board of the district.
4. The applicable laws of the state governing the water resource district board control the initial size and the initial terms of office of officers and the board, in lieu of sections 61-35-08 through 61-35-11.
5. The district shall bring its operation and structure into compliance with the requirements of section 61-35-08 regarding the number and qualification of directors, section 61-35-09 regarding new bylaws, section 61-35-10 regarding dividing its directors into classes, and section 61-35-11 regarding board meetings at the first annual meeting of the participating members and board. The new district has all the rights and all the property of the original water

supply system and is responsible for all its obligations. Title to any property is vested in the new district with no reversion or impairment of ownership rights caused by the conversion to a district. A water supply agreement entered by a water resource district is binding for its term on a successor district organized by the water resource district, unless otherwise agreed in writing by all parties to the agreement. The right of any creditor may not be impaired by this section without the creditor's consent.

SECTION 200. AMENDMENT. Section 61-35-04 of the North Dakota Century Code is amended and reenacted as follows:

61-35-04. Hearing after filing.

When a petition for the organization of a district is filed with the ~~state-engineer~~department of water resources, the ~~state-engineer~~department shall fix a time for a hearing on the petition not less than fifteen nor more than forty-five days after the filing of the petition. The ~~state-engineer~~department shall prepare a notice as required by section 61-35-05. At least seven days before the date fixed for the hearing on the petition, the notice must be published in the official county newspapers in the counties included within the district. The applicant shall pay all costs of the publication notice.

SECTION 201. AMENDMENT. Section 61-35-05 of the North Dakota Century Code is amended and reenacted as follows:

61-35-05. Contents of notice.

The notice prepared by the ~~state-engineer~~department of water resources must set forth:

1. The location of the area designated by the petitioners to be included in the proposed district, as described or shown by the original petition.
2. The time and place fixed by the ~~state-engineer~~department of water resources for the hearing on the petition.
3. That all owners or tenants of real property or other interested persons within the boundaries described may appear and be heard.
4. That the proposed district, if organized, has no power or authority to levy any taxes.

SECTION 202. AMENDMENT. Section 61-35-07 of the North Dakota Century Code is amended and reenacted as follows:

61-35-07. Findings - Order.

After the hearing, the ~~state-engineer~~department of water resources may strike off any part of the territory that testimony shows will not be benefited by the creation of the district. If the ~~state-engineer~~department does not find that the district is reasonably necessary, the ~~state-engineer~~department shall dismiss the petition. If the ~~state-engineer~~department finds that the required notice of the hearing has been given and that the proposed district is reasonably necessary for the public health, convenience, and comfort of the residents, the ~~state-engineer~~department shall make an order establishing the district as a political subdivision, designating its boundary, and identifying it by name or number. The order ~~shall~~must be published in the same newspaper or newspapers that published the notice of hearing. The applicant shall

pay all costs of the publication of the order. The ~~state engineer~~department shall prepare and preserve a complete record of the hearing on the petition and the ~~state engineer's department's~~ findings and action.

SECTION 203. AMENDMENT. Section 61-35-08 of the North Dakota Century Code is amended and reenacted as follows:

61-35-08. Meeting of members - Election of board.

As a part of the order organizing the district, the ~~state engineer~~department of water resources shall fix the time and place at which the members shall meet to select from their number a board of directors. Selection of the initial board may not be later than thirty days after the order is issued. The number of directors on the board, not to exceed nine, must be determined by a majority vote of those members present. Any member elected a director who fails to become a participating member, within thirty days after entry in the minutes of the board of a declaration of availability of benefit units for subscription, forfeits the office of director.

SECTION 204. AMENDMENT. Section 61-35-16 of the North Dakota Century Code is amended and reenacted as follows:

61-35-16. Plans and specifications.

As soon as reasonably possible after organizing a district, the board shall file with the ~~state engineer~~department of water resources copies of the plans and specifications for, and estimates of the cost of, any improvements authorized by this chapter which the board proposes to construct or acquire. The board shall determine a reasonable fee that each member shall pay for the privilege of utilizing the district's facilities, which shall be known as a benefit unit. By publication in the official county newspaper of each county in which all or part of the district is located, the board shall ~~generally~~ describe generally the planned improvements, the area to be served, and the fee members will be required to pay for each service connected to the water system.

SECTION 205. AMENDMENT. Section 61-35-18 of the North Dakota Century Code is amended and reenacted as follows:

61-35-18. Inclusion of property in district - Inclusion of municipality - Merger.

1. Owners of real property outside any district which can ~~economically~~ economically be served by the facilities of the district may petition to be attached to the district. The petition must be filed with the ~~state engineer~~department of water resources, and the ~~state engineer~~department shall proceed in substantially the same manner as is provided by this chapter for filing of and proceeding on a petition for organization of a district.
2. All or part of an incorporated city may be included in the boundaries of any existing district or a district being newly organized, provided the governing body of the city by resolution or ordinance gives its consent.
3. Boards of two or more districts by concurrent action and by approval of the ~~state engineer~~department of water resources may merge their districts into one. In case of merger, the members of the boards of the merged districts may serve until the next annual meeting at which time the district shall comply with the requirements of section 61-35-08 regarding the number and eligibility of directors, adopt new bylaws, and set the terms of the new board according to section 61-35-10. The resulting district shall take over all the assets and

legal liabilities of the districts joining in the merger. Obligations of any district secured by the revenue of the systems operated by the district must continue to be required, or a sinking fund must be established for that purpose created from revenue from the system operated over the same area by the resulting district in accordance with the laws under which the obligations were issued, until all obligations of the old district have been retired.

4. If there is a conflict between two or more districts concerning which district will serve an area, the ~~state engineer~~department of water resources, after a public hearing, shall determine which district can provide services more adequately and economically ~~provide service~~ within the area.

SECTION 206. AMENDMENT. Section 61-35-20 of the North Dakota Century Code is amended and reenacted as follows:

61-35-20. Exclusion of real property from district.

If it becomes apparent that any real property included within a district but contiguous to a border cannot economically or adequately be served by the facilities of the district, the owners of the real property or the board may file with the ~~state engineer~~department of water resources a petition to the ~~state engineer~~ requesting that the real property be excluded from the district. The petition must:

1. Describe by full and partial section and by township and range, or by lot number and subdivision, ~~as the case may be~~, the real property that it is ~~proposed~~the petitioner proposes to exclude from the district.
2. State that the real property cannot be served economically or adequately be served by the facilities of the district, and that it is not feasible for the district to enlarge or extend its facilities to serve economically and adequately serve the real property.
3. Be signed by the owners of all the real property that ~~it is desired to exclude~~proposed to be excluded from the district or by all of the board.

SECTION 207. AMENDMENT. Section 61-35-21 of the North Dakota Century Code is amended and reenacted as follows:

61-35-21. Inactive district dissolved.

A petition may be filed with the ~~state engineer~~department of water resources requesting the ~~state engineer~~department to dissolve an inactive district. The petition must:

1. List all real and personal property of any kind exclusive of records, maps, plans, and files and state that all of its debts and obligations have been fully paid fully.
2. State that the district is not functioning and probably will ~~probably~~ continue to be inoperative.
3. Be signed by three-fourths of the members of the district.

SECTION 208. AMENDMENT. Section 61-35-22 of the North Dakota Century Code is amended and reenacted as follows:

61-35-22. Hearing.

1. Upon the filing with the state engineer department of water resources of a petition under section 61-35-20 or 61-35-21, the state engineer department shall fix a time for consideration of the petition. The state engineer department may hold a hearing on the petition. After consideration of the petition, and after the hearing if one is held, the state engineer department shall ascertain whether:
 - 1- a. The petition meets all of the requirements prescribed by section 61-35-20 or 61-35-21.
 - 2- b. It appears from all information available to the state engineer department that each allegation included in the petition is factual.
2. If the state engineer's department's finding on each of the foregoing points is positive, the state engineer department shall declare the real property described in the petition detached from the district or declare the district dissolved, ~~as the case may be~~. The state engineer department shall notify the secretary of the district of the state engineer's department's action, and the secretary shall amend the records of the district to show that the real property described in the petition has been detached from the district. Within thirty days, the secretary shall deliver to the state engineer department all records, maps, plans, and files of the dissolved district.

SECTION 209. AMENDMENT. Section 61-35-23 of the North Dakota Century Code is amended and reenacted as follows:

61-35-23. Disposition of assets.

If a district is dissolved, the state engineer department of water resources shall provide for the disposition of any property owned by the district and for the apportionment of the proceeds and any other moneys belonging to the district to an adjoining district. If there is no adjoining district, the state engineer department shall apportion and dispose of the property and proceeds to the general fund of each county in the district in proportion to the county's area in the district. Any pledge or lien given with respect to any outstanding bonds of the district remains and any property so encumbered must be handled in conformity with the bond resolution or trust indenture. Money, property, or the proceeds from property may not be distributed to any private interests.

SECTION 210. AMENDMENT. Section 61-35-25 of the North Dakota Century Code is amended and reenacted as follows:

61-35-25. Alternate operation by nonprofit corporation or cooperative.

A nonprofit corporation or cooperative association established under title 10 for the specific purpose of operating a rural water system may petition the state engineer department of water resources to organize a district, in the manner provided by section 61-35-02. The signatures of the corporation's or cooperative's officers on the petition and a resolution adopted by the members in the manner provided in section 10-15-37 for amendments to articles or in the manner provided in chapter 10-33 for dissolution, ~~as the case may be~~, approving the petition suffice in lieu of signatures of owners of fifty percent of the real property in the proposed district, if the petition presenter provides evidence satisfactory to the state engineer department that a sufficient number of members of the proposed district will subscribe or have subscribed to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition is as provided by this chapter. In any

district organized upon the petition of a nonprofit corporation or cooperative association, the following procedures apply:

1. After final approval of the petition by the ~~state engineer department~~, the secretary of the corporation or cooperative shall file a notice with the secretary of state or attorney general, if applicable, in accordance with title 10.
2. Upon filing of the notice, the nonprofit corporation or cooperative ceases to exist as a title 10 entity and all assets and liabilities of the nonprofit corporation or cooperative become the assets and liabilities of the newly organized district without any further meetings, voting, notice to creditors, or other actions by the members of the board.
3. The officers and board of directors of the corporation or cooperative are the officers and board of the district.
4. The applicable laws of the state and the articles of incorporation and bylaws of the corporation or cooperative control the initial size and initial term of office of officers and the board, in lieu of sections 61-35-08 through 61-35-11.
5. The district shall bring its operation and structure into compliance with the requirements of section 61-35-08 regarding the number and qualification of directors, section 61-35-09 regarding new bylaws, section 61-35-10 regarding dividing its directors into classes, and section 61-35-11 regarding board meetings at the first annual meeting of the participating members and board. The new district has all the rights and all the property of the original corporation or cooperative and is responsible for all its obligations. Title to any property is vested in the new district with no reversion or impairment of ownership rights caused by the conversion to a district. A water supply agreement entered by a nonprofit corporation or cooperative association is binding for its term on a successor district organized by the nonprofit corporation or cooperative association, unless otherwise agreed in writing by all parties to the agreement. The right of any creditor may not be impaired by this section without the creditor's consent.

SECTION 211. AMENDMENT. Section 61-35-63 of the North Dakota Century Code is amended and reenacted as follows:

61-35-63. Appeal to ~~state engineer department~~ of water resources.

Within ten days after the hearing under section 61-35-62, affected landowners and any political subdivision subject to assessment, having not less than twenty-five percent of the possible votes as determined under section 61-35-60, who believe that the assessment has not been fairly or equitably made, or that the project is not properly located or designed, may appeal to the ~~state engineer department of water resources~~ by petition, to review the assessments and examine the location and design of the proposed project. Upon receipt of a petition, the ~~state engineer department~~ shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments have not been made equitably, the ~~state engineer department~~ may proceed to correct the assessments, and the ~~state engineer's department's~~ correction and adjustment of assessments is final. If it appears to the ~~state engineer that department~~ the project has been ~~improperly~~ located or designed ~~improperly~~, the ~~state engineer department~~ may order a relocation and redesign, which must be followed in the construction of the proposed project. Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the ~~state engineer department~~ in the matter, any landowner or political

subdivision claiming to receive no benefit from the project may appeal to the ~~state engineerdepartment~~ the question of whether there is any benefit. The appeal must be filed with the ~~state engineerdepartment~~ within ten days after the hearing on assessments in section 61-35-62. The ~~state engineerdepartment~~ may not determine the specific amount of benefit upon an appeal by an individual landowner or political subdivision ~~andbut~~ may determine only if there is any benefit to the landowner or political subdivision. The determination of the ~~state engineerdepartment~~ upon the appeal is final.

SECTION 212. AMENDMENT. Section 61-38-01 of the North Dakota Century Code is amended and reenacted as follows:

61-38-01. Definitions. (Contingent effective date - [See note](#))

The ~~state engineerdepartment of water resources~~ shall adopt definitions that are consistent with federal law for, among other words: "dredged material", "fill material", "general permit", "person", "waters of the state", and "wetlands".

SECTION 213. AMENDMENT. Section 61-38-02 of the North Dakota Century Code is amended and reenacted as follows:

61-38-02. Powers. (Contingent effective date - [See note](#))

The ~~state engineerdepartment of water resources~~ has the following powers:

1. To exercise general supervision of the administration and enforcement of this chapter and all rules and orders adopted pursuant to this chapter.
2. To advise, consult, and cooperate with other agencies of the state, the federal government, and other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter.
3. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, ~~which. The~~ loans and grants may not be expended for ~~other than the purposes other than those~~ for which the loans and grants were provided.
4. To enter upon or through a permittee's premises where dredged or fill material is discharged, after written notice to the permittee. ~~Such power may be exercised by authorized agents, representatives, and employees of the state engineer.~~
5. To exercise all incidental powers necessary to carry out the purposes of this chapter.
6. To make rules governing the application, issuance, denial, modification, or revocation of permits for the discharge of dredged or fill material into waters of the state and for the administration of this chapter.
7. To hold any hearings necessary for the administration of this chapter.
8. To initiate actions in court for the enforcement of this chapter, including actions to enjoin any threatened or continuing violation of any requirement.
9. To issue administrative orders to restrain any person from engaging in any unauthorized activity.

10. To take all action necessary or appropriate to secure to the state the benefits of section 404 of the Clean Water Act [33 U.S.C. 1344].

³⁴¹ **SECTION 214. AMENDMENT.** Section 61-38-03 of the North Dakota Century Code is amended and reenacted as follows:

61-38-03. Permits - Certification from state department of health required. (Contingent effective date - [See note](#))

The ~~state engineer~~department of water resources may not issue a permit under this chapter without a certification from the state department of health that the permitted activity will not adversely affect water quality.

SECTION 215. AMENDMENT. Section 61-38-04 of the North Dakota Century Code is amended and reenacted as follows:

61-38-04. Specification of disposal sites. (Contingent effective date - [See note](#))

The ~~state engineer~~department of water resources shall specify a disposal site for each permit issued. Each disposal site must be specified for each permit through application of rules adopted by the ~~state engineer~~department. The rules must be consistent with federal law. The ~~state engineer~~department may prohibit the specification of any defined area as a disposal site, withdraw any defined area from specification as a disposal site, or deny or restrict the use of any defined area for specification as a disposal site ~~whenever the state engineer~~when the department determines, after notice and opportunity for public hearing, ~~that the discharge of dredged or fill materials will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.~~

SECTION 216. AMENDMENT. Section 61-38-05 of the North Dakota Century Code is amended and reenacted as follows:

61-38-05. Discharge of dredged or fill material - Permit required - Exceptions. (Contingent effective date - [See note](#))

1. Except as otherwise provided by this chapter, no person may discharge dredged or fill material into waters of the state unless that person has a permit from the ~~state engineer~~department of water resources. No person may discharge dredged or fill material in violation of a permit. A permit is not required for:
 - a. The discharge of dredged or fill material when an activity is authorized by a general permit issued pursuant to section 61-38-06;
 - b. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;
 - c. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levies, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures, which does not change the character, scope, or size of the original fill design;

³⁴¹ Section 61-38-03 was also amended by section 507 of House Bill No. 1247, chapter 352.

- d. Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance of drainage ditches;
 - e. Construction of temporary sedimentation basins on a construction site ~~which that~~ does not include placement of fill material into waters of the state;
 - f. Construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where ~~such the~~ roads are constructed and maintained, in accordance with best management practices, to assure ~~that~~ flow and circulation patterns and chemical and biological characteristics of the waters of the state are not impaired, ~~that~~ the reach of the waters of the state is not reduced, and ~~that~~ any adverse effect on the aquatic environment will be otherwise minimized; or
 - g. The placement of fill material associated with activities ~~which~~ the state regulates by requiring best management practices under chapter 61-28.
2. Any discharge of dredged or fill material into waters of the state incidental to any of the activities identified in subdivisions a through g of subsection 1 must have a permit if it is part of an activity ~~whose purpose is to convert~~ with the purpose of converting an area of waters of the state into a use to which it was not previously subject, where the flow or circulation of waters of the state may be impaired or the reach of such waters reduced, or if the discharge contains a toxic pollutant. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is ~~that~~ flow or circulation may be impaired by ~~such the~~ alteration.

SECTION 217. AMENDMENT. Section 61-38-06 of the North Dakota Century Code is amended and reenacted as follows:

61-38-06. General permits. (Contingent effective date - [See note](#))

1. In carrying out the functions relating to the discharge of dredged or fill material, ~~the state engineer may~~ department of water resources, after notice and opportunity for public hearing, may issue general permits on a state or regional basis for any category of activities involving discharges of dredged or fill material if ~~the state engineer~~ department determines ~~that~~ the activities in the category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal accumulative adverse effects on the environment. Any general permit issued under this section must set forth the requirements and standards ~~which apply~~ applicable to any activity authorized by the general permit. General permits must be issued pursuant to rules adopted by ~~the state engineer~~ department which are consistent with federal law.
2. A general permit may be revoked or modified by ~~the state engineer~~ department of water resources, after opportunity for public hearing, ~~the state engineer~~ if the department determines ~~that~~ the activities authorized by the general permit have an adverse impact on the environment or ~~such activities~~ are authorized more appropriately ~~authorized~~ by individual permits.
3. ~~The state engineer~~ department of water resources may require an individual permit for any proposed activity under a general permit where the nature or location of the activity makes an individual permit more appropriate.

SECTION 218. AMENDMENT. Section 61-38-07 of the North Dakota Century Code is amended and reenacted as follows:

61-38-07. Emergency permits. (Contingent effective date - [See note](#))

The ~~state engineer~~department of water resources may issue a temporary emergency permit for the discharge of dredged or fill material if unacceptable harm to life or severe loss of physical property is likely to occur before a permit could be issued or modified under procedures normally required.

SECTION 219. AMENDMENT. Section 61-38-08 of the North Dakota Century Code is amended and reenacted as follows:

61-38-08. Permit application - Notice - Hearing. (Contingent effective date - [See note](#))

Any person desiring to discharge dredged or fill material for which a permit is required shall file an application with the ~~state engineer~~department of water resources. The application must be on a form prescribed by the ~~state engineer~~department and must include information required by the ~~state engineer~~department. The ~~state engineer~~department may issue a permit after notice and opportunity for public hearing. Within fifteen days of receipt of all the information required to complete an application for a permit, the ~~state engineer~~department shall publish the notice.

SECTION 220. AMENDMENT. Section 61-38-09 of the North Dakota Century Code is amended and reenacted as follows:

61-38-09. Proceedings. (Contingent effective date - [See note](#))

1. Any proceeding to determine compliance with or violation of the provisions of this chapter or any rule, order, or condition in a permit issued pursuant to this chapter by the ~~state engineer~~department of water resources must be conducted in accordance with chapter 28-32.
2. Any person claiming to be aggrieved or adversely affected by actions taken or by any rule or order issued pursuant to this chapter may request a hearing by the ~~state engineer~~department of water resources if no hearing on the matter resulting in the action has been held. If a hearing has been held, the person claiming to be aggrieved or adversely affected may petition for reconsideration and may appeal in accordance with chapter 28-32.

SECTION 221. AMENDMENT. Section 61-38-10 of the North Dakota Century Code is amended and reenacted as follows:

61-38-10. Penalties. (Contingent effective date - [See note](#))

The ~~state engineer~~department of water resources may assess or sue to recover civil penalties and seek criminal remedies as provided in this section.

1. The ~~state engineer~~department may assess or recover civil penalties for discharges of dredged or fill material without a required permit or in violation of any permit condition of up to five thousand dollars per day of such violation.
2. The ~~state engineer~~department may seek criminal fines against any person who willfully or with criminal negligence discharges dredged or fill material

without a required permit or violates any permit condition issued under this chapter of up to ten thousand dollars per day of such ~~the~~ violation.

3. The ~~state engineer~~department of water resources may seek criminal fines against any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any rules adopted pursuant to this chapter, or falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit of up to five thousand dollars for each instance of violation.

SECTION 222. AMENDMENT. Section 61-38-11 of the North Dakota Century Code is amended and reenacted as follows:

61-38-11. Restoration. (Contingent effective date - [See note](#))

In lieu of or in addition to the penalties authorized under section 61-38-10, the ~~state engineer~~department of water resources may require restoration of areas in which dredged or fill material has been ~~illegally~~ discharged ~~illegally~~. If the ~~state engineer~~department determines that any person has discharged dredged or fill material without a permit or in violation of any permit condition, the ~~state engineer~~department shall notify the person by registered or certified mail. The notice must specify the nature and extent of noncompliance and state that the area in which the dredged or fill material is located must be restored to the satisfaction of the ~~state engineer~~department within thirty days of receipt of the notice. If the area is not restored as required, the ~~state engineer~~department shall cause the restoration of the area and assess the cost of the restoration against the person ~~or persons~~ responsible for the illegal discharge.

SECTION 223. AMENDMENT. Section 61-39-01 of the North Dakota Century Code is amended and reenacted as follows:

61-39-01. Findings and declaration of policy.

The legislative assembly declares that many areas and localities in eastern and central North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in eastern and central North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply; that greater economic security and the protection of health and property benefits the land and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and ~~neecessitates and~~ requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, ~~it is declared necessary that a water authority is~~ needed to store and distribute water to eastern and central North Dakota ~~be established~~ to provide for the supply and distribution of water to the people of eastern and central North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, and other uses, with primary emphasis on domestic, rural water, and municipal uses; and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of eastern and central North Dakota, by the bulk purchase of water from the Garrison Diversion Conservancy District delivered by the Red River valley water supply project for beneficial and public uses. The Garrison Diversion Conservancy District may acquire, construct, and improve, ~~and own~~ the Red River valley water supply project and may enter water supply contracts with member cities and water districts for the sale of water for consumption within or outside the district or the state, including with Canada. Alternatively, the Lake

Agassiz water authority may enter one or more contracts to provide for the authority to acquire bulk water from the Garrison Diversion Conservancy District and may enter water supply contracts with member cities and water districts for the resale of this water for consumption within or outside the state.

The legislative assembly acknowledges that North Dakota and Minnesota communities jointly use the Red River as a water resource. It is in the best interest of eastern North Dakota also to study and possibly provide for the water needs of those Minnesota communities through a Red River valley water supply project, particularly if that project maintains the use of the Red River for North Dakota communities.

In furtherance of this public purpose, the state water commission may provide for the issuance of bonds in accordance with chapter 61-02 to finance the costs of any project to deliver water to eastern and central North Dakota or utilize other financing as addressed in this chapter. This chapter does not abrogate or limit the rights, powers, duties, and functions of the state water commission or ~~state engineer~~ department of water resources, but is supplementary to those rights, powers, duties, and functions.

SECTION 224. AMENDMENT. Section 61-40-07 of the North Dakota Century Code is amended and reenacted as follows:

61-40-07. Easement granted for pipelines and appurtenant facilities on any public lands.

In connection with the construction and development of the project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the project. However, ~~the director of the department of transportation and the state engineer must approve the plans of the authority with respect to the use of right of way of roads must be approved by the director of the department of transportation and the director of the~~ department of water resources before the grant becomes effective.

³⁴² **SECTION 225. REPEAL.** Sections 61-03-01, 61-03-02, and 61-03-05.1 of the North Dakota Century Code are repealed.

Approved April 19, 2021

Filed April 20, 2021

³⁴² Section 61-03-05.1 was also repealed by section 15 of Senate Bill No. 2035, chapter 56.

CHAPTER 489

HOUSE BILL NO. 1088

(Energy and Natural Resources Committee)
(At the request of the State Water Commission)

AN ACT to amend and reenact section 61-02-01.3 of the North Dakota Century Code, relating to the state water commission's comprehensive water development plan; and to repeal section 61-02-01.5 of the North Dakota Century Code, relating to North Dakota outdoor heritage fund grants and their effect on state water commission cost-share amounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-01.3 of the North Dakota Century Code is amended and reenacted as follows:

61-02-01.3. Comprehensive water development plan.

Biennially, the commission shall develop and maintain a comprehensive water development plan organized on a river basin perspective, including an inventory of future water projects for budgeting and planning purposes. As part of the commission's planning process, to facilitate local project sponsor participation and project prioritization and to assist in education regarding life cycle analyses for municipal water supply projects, and economic analyses for flood control and water conveyance projects expected to cost more than one million dollars, the commission shall develop a policy that outlines procedures for commissioner-hosted meetings within the upper Missouri River, lower Missouri River, James River, upper Red River, lower Red River, James River, Mouse River, upper Missouri River, lower Missouri River, and Devils Lake, Little Missouri River, upper Heart River, and upper Cannonball River drainage basins.

SECTION 2. REPEAL. Section 61-02-01.5 of the North Dakota Century Code is repealed.

Approved March 17, 2021

Filed March 18, 2021

CHAPTER 490

HOUSE BILL NO. 1437

(Representatives Schreiber-Beck, D. Anderson, Beltz, D. Johnson, J. Nelson, O'Brien, Schmidt)
(Senators Klein, Kreun)

AN ACT to create and enact section 61-32-03.2 of the North Dakota Century Code, relating to small subsurface water management systems; to amend and reenact subsection 3 of section 61-02-01.4 and section 61-32-03.1 of the North Dakota Century Code, relating to large subsurface water management system permits and the state water commission cost-share policy; to provide a penalty; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 61-02-01.4 of the North Dakota Century Code is amended and reenacted as follows:

3. Must consider all project costs potentially eligible for reimbursement, except the commission shall exclude operations expense, regular maintenance, and removal of vegetative materials and sediment, for assessment drains, and may exclude operations expense and regular maintenance for other projects. Snagging and clearing of watercourses are not regular maintenance and deepening or widening of existing drains are eligible for reimbursement. The commission shall require a water project sponsor to maintain a capital improvement fund from the rates charged customers for future extraordinary maintenance projects as condition of funding an extraordinary maintenance project.

³⁴³ **SECTION 2. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

- 1.a. Installation of a subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. ~~The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section. A person that violates this section is guilty of an infraction.~~
- b. Subsurface water management systems that use surface intakes or lift stations must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].

³⁴³ Section 61-32-03.1 was also amended by section 182 of House Bill No. 1353, chapter 488.

- ~~c. Installation of a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area does not require a permit.~~
- 2. For purposes of this section, a "natural watercourse" includes, in addition to watercourses defined in section 61-01-06, any waterway depicted as a perennial or intermittent stream or river on a United States geological survey topography map.
- ~~3. a. The state engineer shall develop an application form for a permit required under this section. A person seeking to construct a subsurface water management system that requires a permit under this section must~~shall ~~submit a completed application to the water resource district board within which is found a majority of the land area for consideration and approval. The water resource district board may charge permit applicants a fee up to one hundred fifty dollars. Water resource districts shall forward copies of all approved permits to the state engineer. The fee must be paid before the water resource district may approve the application.~~
- ~~b. Upon submission of a completed application for a permit, the water resource district board immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest waterway depicted as a perennial or intermittent stream or river on a United States geological survey topography map, assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.~~
- 3. ~~a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the completed permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the completed application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the completed permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.~~

- b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.
 - c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right of way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.
 - d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resource district board may not deny a completed permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream of the system's outlet. The board shall include a written explanation of the reasons for a denial of a completed application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the completed application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a completed permit application by a water resource district board may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a completed permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A completed permit application includes:
 - (1) A completed application form signed by an applicant and filed with the district;

- (2) Evidence of ownership for each parcel to be tiled according to the tax rolls of the county in which the parcel is located;
 - (3) A project design, including:
 - (a) A detailed drawing depicting the subsurface water management system's location overlain on an aerial photograph of the parcel;
 - (b) The system's location by legal description identifying either the relevant quarter, section, township, and range or the relevant block and lot number;
 - (c) The physical footprint of the system's layout;
 - (d) The tile-main sizes and locations;
 - (e) The laterals to the tile-main sizes and locations;
 - (f) Surface inlet sizes and locations; and
 - (g) Outlet sizes, locations, and types;
 - (4) A downstream flow map or depiction of the flow direction from each outlet location for one mile [1.61 kilometers] downstream which includes the location of the downstream parcels by legal description identifying either the relevant quarter, section, township, and range or the relevant block and lot number; and
 - (5) Evidence of ownership for each parcel within one mile [1.61 kilometers] downstream of each project outlet according to the tax rolls for the county in which the parcel is located, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers] downstream of a proposed outlet, in which case the applicant shall provide evidence of ownership for each parcel between the outlet and the nearest assessment drain, natural watercourse, slough, or lake.
- c. Unless the district notifies an applicant the application is incomplete and provides a list of information required to complete the application within three business days after the day the district receives the application, the application is deemed complete.
- d. Detailed drawings submitted pursuant to subparagraph a of paragraph 3 of subdivision b as part of an application for a permit under this section after the effective date of this Act are exempt records under section 44-04-18 and may be provided to individuals only as necessary to make a decision whether to approve the permit.
- 4. A district may attach conditions to an approved permit for a subsurface water management system if the conditions address:
 - a. Outlet locations including requirements for pump and control structures to be installed no closer than twenty-five feet [7.62 meters] from the top of the back slope of an assessment drain;

- b. Installation and maintenance of proper erosion control at all outlets;
- c. Re-establishment of disturbed areas to previous conditions;
- d. The minimum distance from rural water supply lines. However, a district may not attach a condition requiring a system to extend beyond an existing easement for a rural waterline, or, if the rural waterline was installed under a blanket easement, requiring a system to extend beyond twenty feet [6.1 meters] from either side of a rural waterline;
- e. Installation and operation of control structures at project outlets including requirements for control structures to be closed or pump outlets to be turned off during critical flood periods;
- f. Requirements for a permittee to obtain an amendment to a permit for alterations to outlet locations, new outlets, or improvements resulting in drainage of additional acres;
- g. If the subsurface water management system will discharge into the watershed area of an assessment drain, inclusion of the relevant property into the assessment district for the assessment drain in accordance with the benefits the property receives, provided the property is not assessed already for the assessment drain. The water resource district may include the new property into the assessment district, and determine the benefits and assessment amounts under chapters 61-21 and 61-16.1, without conducting the reassessment of benefit proceedings under sections 61-21-44 and 61-16.1-26, provided the property is not assessed already for the assessment drain.
- h. Requirements for a permittee to remove silt and vegetation, or repair erosion and scour damages directly caused by the subsurface water management system, up to one mile [1.61 kilometers] downstream from a proposed outlet, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers] downstream of the proposed outlet, in which case the district may require silt and vegetation removal or erosion and scour damage repair between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. For purposes of this subdivision and subdivision i:
 - (1) Downstream damage repair does not include deepening or widening a road ditch or existing drain;
 - (2) The timing and method of silt and vegetation removal or damage repair in a county or township road ditch must be preapproved by the appropriate road authority; and
 - (3) The applicant shall follow any construction site protection requirements of the road authority.
- i. If a downstream landowner or road authority presents substantial evidence a subsurface water management system directly has caused accumulation of silt, vegetation erosion, or scouring, the requirement or authorization of the applicant to remove the silt and vegetation or repair the erosion and scour damages directly caused by the system. However, the applicant may

not spread silt, vegetation, or debris along adjoining land without the permission of all parties having a legal interest in the land.

5. A district shall approve a permit, including any permissible conditions, within thirty days after the district receives the completed application. If the district fails to approve the permit application within that period, the permit is deemed approved with no conditions.
6. Upon approval of a permit, the district shall forward notice of the approved permit and the downstream flow map to the state engineer and to each landowner who owns property within one mile [1.61 kilometers] downstream of each project outlet according to the tax rolls of the county in which the property is located, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers] downstream of the proposed outlet, in which case the district shall provide notice to landowners with property between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The district shall send copies of the notice by first-class mail, attested by an affidavit of mailing. The district does not need to provide copies of the permit application under this subsection.
7. An amendment of a previously approved subsurface water management system permit must be made according to the provisions for approving a permit under this section.
8. A water resource district board may not be held liable to any person for issuing a permit under this section.
- ~~6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.~~
- ~~7. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is guilty of an infraction.~~
9. Approval of a permit under this section does not prohibit a downstream party unreasonably damaged by the discharge of water from a subsurface water management system from seeking damages in a civil action.
10. This section applies only to subsurface water management systems that drain, in whole or in part, platted or unplatted lands used for raising agricultural crops or grazing farm animals.

SECTION 3. Section 61-32-03.2 of the North Dakota Century Code is created and enacted as follows:

61-32-03.2. Smaller subsurface water management systems - Notification and conditions - Penalty.

1. A person may not install a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area until the person has notified the board of the water resource district within which is found a majority of the land area of the system of the following information:

- a. The system's total acreage and legal description of the land being drained;
 - b. The outlet locations and types; and
 - c. The flow direction from each outlet location.
2. A person required to notify the board under subsection 1 shall install the subsurface water management system such that:
 - a. Pump and control structures at pump outlets are installed no closer than twenty-five feet [7.62 meters] from the top of the back slope of an assessment drain;
 - b. Proper erosion controls are installed and maintained at all outlets; and
 - c. Pumps and control structures at project outlets are closed or turned off during critical flood periods.
3. If a subsurface water management system for which notification is required under subsection 1 will discharge into the watershed area of an assessment drain, the water resource board that receives the notice may require the relevant property to be included in the assessment district for the assessment drain in accordance with the benefits the property receives, provided the property is not assessed already for the assessment drain. The water resource district also may include the property in the assessment district and determine the benefits and assessment amounts under chapters 61-21 and 61-16.1, without conducting the reassessment of benefit proceedings under sections 61-21-44 and 61-16.1-26, provided the property is not assessed already for the assessment drain.
4. The board of the water resource district within which the subsurface water management system is located may order the system's owner or operator to bring the system into compliance with subsection 2 if the board finds the system violates that subsection.
5. A person that violates this section is guilty of an infraction.
6. This section applies only to subsurface water management systems that drain, in whole or in part, platted or unplatted lands used for raising agricultural crops or grazing farm animals.
7. This section does not apply to a subsurface water management system that discharges into a body of water completely encompassed by land owned by the person that owns the land drained by the system.
8. The information that must be provided to a board of a water resource district under this section is an exempt record under section 44-04-18.

SECTION 4. EXPIRATION DATE. Section 3 of this Act is effective through December 31, 2022, and after that date is ineffective.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 30, 2021

Filed May 3, 2021

CHAPTER 491

HOUSE BILL NO. 1216

(Representatives Damschen, D. Anderson, Monson, Schauer, Westlund)
(Senators Dwyer, Oehlke)

AN ACT to amend and reenact subsection 2 of section 61-16-08 of the North Dakota Century Code, relating to compensation and reimbursement of water resource district board members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Each~~While performing duties as a member of a water resource board shall, each member is entitled to receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall compensation of at least seventy-five dollars per day but not more than the rate set for a member of the legislative assembly under section 54-03-20, an allowance for meals at the same rates and under the same conditions as provided by law for state officials and employees, and reimbursement of lodging and other necessary travel expenses at the same rate and under the same conditions as provided by law for state officials and employees. A request for an allowance or reimbursement must be evidenced by a subvoucher or receipt as provided by section 21-05-01.

Approved March 16, 2021

Filed March 16, 2021

CHAPTER 492

SENATE BILL NO. 2081

(Energy and Natural Resources Committee)
(At the request of the State Water Commission)

AN ACT to amend and reenact sections 61-16.2-06 and 61-16.2-08 of the North Dakota Century Code, relating to permissible uses in the floodway and flood fringe under the national flood insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.2-06 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-06. Permissible floodway uses.

Upon delineation of the floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], uses shall be permitted within the floodway to the extent that they do not cause any measurable decrease in the hydraulic conveyance in the affected areas result in any increase in flood levels during the occurrence of the base flood discharge. Any exception to the national flood insurance program [42 U.S.C. 4001 et seq.] in implementing regulations granted by the appropriate federal agency to a community participating in the national flood insurance program is an approved exception pursuant to this section.

SECTION 2. AMENDMENT. Section 61-16.2-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-08. Community standards - Permissible uses within flood fringe.

1. Upon delineation of the floodplain or floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], the following uses ~~shall~~must be permitted within the flood fringe to the extent ~~that they~~the uses are not prohibited by any other ordinance, regulation, or statute:
1. a. Any use permitted in the regulatory floodway pursuant to section 61-16.2-06.
2. b. Structures, including residential and nonresidential structures; provided,~~that:~~
 - a. (1) Residential structures are constructed ~~such that~~so the lowest floor, including basements, is elevated to at least one foot [30.48 centimeters] above the base flood elevation unless granted a residential basement floodproof exception under the national flood insurance program.
 - b. (2) Nonresidential structures are either are constructed as specified in subdivision a and elevated to at least one foot [30.48 centimeters] above the base flood elevation or are ~~adequately~~adequately floodproofed up to an elevation no lower than two feet [.61 meter] above

the base flood elevation. ~~Such~~The floodproofing shall~~must~~ be in accordance with the standards either adopted by the community under the national flood insurance program [42 U.S.C. 4001 et seq.] or under this chapter, whichever are more restrictive.

2. Any exception to this section must be approved by the regulatory authority as a variance, established in local floodplain development ordinances.
3. Any exception to the national flood insurance program [42 U.S.C. 4001 et seq.] in implementing regulations granted by the appropriate federal agency to a community participating in the national flood insurance program is an approved exception under this section.

Approved March 22, 2021

Filed March 23, 2021

CHAPTER 493

HOUSE BILL NO. 1063

(Energy and Natural Resources Committee)
(At the request of the State Water Commission)

AN ACT to amend and reenact sections 61-24.6-02, 61-24.6-03, 61-24.6-04, 61-24.6-06, 61-24.6-07, 61-24.6-08, 61-24.6-09, 61-24.6-10, and 61-24.6-11 of the North Dakota Century Code, relating to the northwest area water supply advisory committee and the areas to be served by the northwest area water supply project; to provide for legislative management reports; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁴⁴ **SECTION 1. AMENDMENT.** Section 61-24.6-02 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-02. Northwest area water supply advisory committee - Created.

The northwest area water supply advisory committee consists of the following representatives, appointed by the state engineer:

1. One person from the city of Minot recommended by the Minot city council.
2. ~~One person from the city of Williston recommended by the Williston city council.~~
3. One person from the Bottineau, Burke, ~~Divide~~, McHenry, McLean, ~~Mountrail~~, Pierce, Renville, and Ward, or Williams County water resource districts recommended jointly by the governing boards of the Bottineau, Burke, ~~Divide~~, McHenry, McLean, ~~Mountrail~~, Pierce, Renville, and Ward, or Williams County water resource districts.
- ~~4.3.~~ One representative of the state water commission recommended by the commission.
- ~~5.4.~~ One representative of the ~~Three Affiliated Tribes, representing that area of the Fort Berthold Indian Reservation north of the Missouri River and Lake Sakakawea~~ Turtle Mountain Band of Chippewa Indians recommended by the tribal council who will serve as a nonvoting member.
- ~~6.5.~~ One representative of rural water distribution systems located in northwestern North Dakota. This representative must be a resident of Bottineau, Burke, ~~Divide~~, McHenry, McLean, ~~Mountrail~~, Pierce, Renville, or Ward, or Williams County.

³⁴⁴ Section 61-24.6-02 was also amended by section 174 of House Bill No. 1353, chapter 488.

- ~~7-6.~~ One representative of a municipality other than the city of Minot, located in Bottineau, Burke, ~~Divide~~, McHenry, McLean, ~~Mountrail~~, Pierce, Renville, ~~or Ward, or Williams County.~~
- 8-7. One representative of the Garrison Diversion Conservancy District recommended by the board of directors of the conservancy district.
- 9-8. One at-large representative.

³⁴⁵ **SECTION 2. AMENDMENT.** Section 61-24.6-03 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-03. Advisory committee - Duty - Officers - Meetings - Compensation - Staffing.

The northwest area water supply advisory committee shall develop recommendations for the legislative management regarding the transition of long-term operations and management of the northwest area water supply project. The advisory committee shall elect a chairman and vice chairman. The advisory committee shall and meet no less than once per quarter at the times and places necessary to carry out the purposes of this chapter. The advisory committee members may be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09. The advisory committee members serve at the pleasure of the state engineer. Vacancies must be filled in the same manner as original appointments are made. The state water commission shall provide staffing and support for the advisory committee.

SECTION 3. AMENDMENT. Section 61-24.6-04 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-04. Powers of the state water commission in consultation with the northwest area water supply advisory committee.

The state water commission ~~may, in consultation,~~ shall consult with the northwest area water supply advisory committee regarding the following duties of the commission:

1. Accept funds, property, services, or other assistance, financial or otherwise, from federal, state, tribal, and other public or private sources for the purpose of aiding and promoting the development of a project to deliver water to northwestern North Dakota.
2. Cooperate and contract with the state, its agencies, or its political subdivisions, the Three Affiliated Tribes, or any agency of the United States, in research and investigation or other activities promoting the development of a project to deliver water to northwestern North Dakota.
3. Appoint and procure the services of engineers, attorneys, and others to assist in developing a project to deliver water to northwestern North Dakota.
4. Exercise such other powers as may be necessary for, or incidental to, the achievement of the purposes of this chapter.

³⁴⁵ Section 61-24.6-03 was also amended by section 175 of House Bill No. 1353, chapter 488.

5. Construct, operate, and manage a project to deliver water throughout ~~northwestern North Dakota~~ the project area.

SECTION 4. AMENDMENT. Section 61-24.6-06 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-06. Commission to fix water rates for the northwest area water supply project.

The state water commission, after consulting with the northwest area water supply advisory committee, shall establish the payments for water service to be paid by water user entities for purchase of water from the northwest area water supply project. The payments for water service must include each water user entity's proportionate share of the operation, maintenance, and replacement costs, and also include a component for payment for capital costs. The commission shall include in its determination of each water user entity's share of operation, maintenance, and replacement costs an amount to be deposited in the northwest area water supply project reserve fund for replacement, as established by section 61-24.6-07, for replacement and extraordinary maintenance of northwest area water supply project works. The amount of the reserve fund for replacement must be determined by the commission.

SECTION 5. AMENDMENT. Section 61-24.6-07 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-07. Operation and maintenance fund - Deposit - Use.

Revenues received by the state water commission from water user entities or otherwise for operation and maintenance of the northwest area water supply project must be maintained, as a part of the moneys of the state received and kept by the state treasurer in a fund to be designated as the northwest area water supply project operation and maintenance fund. All moneys received by the state treasurer for operation and maintenance of the northwest area water supply project and the interest on moneys in the fund must be kept by the state treasurer in the fund distinct from all other moneys and must be disbursed by the state treasurer and used only for paying for costs and expenditures for operation and maintenance of the northwest area water supply project.

SECTION 6. AMENDMENT. Section 61-24.6-08 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-08. Reserve fund for replacement - Deposit - Use.

Revenues received by the state water commission from water user entities or otherwise for replacement and extraordinary maintenance of the northwest area water supply project may be held pursuant to the terms of a resolution or trust indenture adopted by the commission. Any money not held pursuant to the terms of a resolution or trust indenture must be deposited by the commission and maintained, as a part of the moneys of the state received and kept by the state treasurer, in a fund designated as the northwest area water supply project reserve fund for replacement. All moneys received by the state treasurer for replacement and extraordinary maintenance of the northwest area water supply project and the interest on the moneys must be kept by the state treasurer in the fund distinct from all other moneys and must be disbursed by the state treasurer and used only for replacement and extraordinary maintenance of the northwest area water supply project.

SECTION 7. AMENDMENT. Section 61-24.6-09 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-09. Capital costs - Deposit - Use.

Money derived and received from water user entities or otherwise for capital costs or construction of the northwest area water supply project may be held pursuant to the terms of a resolution or trust indenture adopted by the state water commission. Any money not held pursuant to the terms of a resolution or trust indenture must be deposited by the commission and maintained, as part of the moneys of the state received and kept by the state treasurer, in a fund designated as the northwest area water supply project fund for capital costs and construction. All moneys received by the state treasurer for capital costs and construction of the northwest area water supply project, and all interest on the moneys, must be kept by the state treasurer in the fund distinct from all other moneys and must be disbursed by the state treasurer and used only for capital costs and construction of the northwest area water supply project.

SECTION 8. AMENDMENT. Section 61-24.6-10 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-10. Areas served by the northwest area water supply project.

The commission may provide, as part of the northwest area water supply project, delivery, distribution, and treatment of water from the Missouri River or other sources, to areas in Bottineau, Burke, ~~Divide~~, McHenry, McLean, ~~Mountrail~~, Pierce, Renville, ~~and Ward, and Williams~~ Counties. The facilities for delivery of water may be from a pipeline transmission and delivery system or through other works, as determined by the commission.

SECTION 9. AMENDMENT. Section 61-24.6-11 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-11. Commission has authority to sell property.

If the state water commission determines property acquired for the northwest area water supply project is no longer necessary for project purposes and the unnecessary parcel is five contiguous acres [2.03 hectares] or less, sections 54-01-05.2 and 54-01-05.5 do not apply. The commission shall have the authority to sell, transfer, or exchange the unnecessary parcel to the current owner of the parent parcel from which the unnecessary parcel was taken. If the parent parcel's current owner does not accept the commission's offer within sixty days, the commission may offer the property to any other adjacent property owner for a period of sixty days. If no offers are accepted within sixty days, the property sale will be governed by sections 54-01-05.2 and 54-01-05.5.

SECTION 10. LEGISLATIVE MANAGEMENT REPORT - NORTHWEST AREA WATER SUPPLY TRANSITION. Before August 1, 2022, the northwest area water supply advisory committee shall provide a report to the legislative management regarding recommendations for transition of the long-term operation and management of the northwest area water supply project.

SECTION 11. LEGISLATIVE MANAGEMENT REPORT - INTERIM STATUS OF NORTHWEST AREA WATER SUPPLY ADVISORY COMMITTEE. During the 2021-22 interim, the northwest area water supply advisory committee shall provide a report to an interim committee designated by the legislative management regarding the status of the advisory committee's responsibilities under section 2 of this Act.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 29, 2021

Filed March 30, 2021